

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
jnock@meyersnave.com
4 Michael C. Hughes (SBN: 215694)
mhughes@meyersnave.com
5 MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
6 Oakland, California 94607
Telephone: (510) 808-2000
7 Facsimile: (510) 444-1108

8 Attorneys for Plaintiff
City of San Jose
9

10 **IN THE SUPERIOR COURT FOR THE**
11 **COUNTY OF SANTA CLARA**

12 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

13 Plaintiff,
14 v.

15 CITY OF SAN JOSE AND BOARD OF
ADMINISTRATORS FOR POLICE AND
16 FIRE DEPARTMENT RETIREMENT PLAN
OF CITY OF SAN JOSE,

17 Defendants.
18
19
20
21

Case No. 112CV225926

**SUPPLEMENTAL DECLARATION OF
ARTHUR A. HARTINGER IN SUPPORT
OF DEFENDANT CITY OF SAN JOSE'S
MOTION TO CONSOLIDATE AND STAY**

Hearing:

Date: August 23, 2012
Time: 9:00 a.m.
Dept: 2
Judge: Hon. Patricia Lucas

Complaint Filed: June 6, 2012

Trial Date: None Set

22
23 I, Arthur A. Hartinger, declare:

24 1. I am an attorney licensed to practice law in all courts of the State of California. I
25 am a principal at the law firm of Meyers, Nave, Riback, Silver & Wilson. The following facts are
26 within my personal knowledge, and if called upon to testify, I could and would testify competently
27 thereto.

28 ///

1 2 I am submitting this supplemental declaration to inform the Court of facts that
2 occurred after the City of San Jose submitted its reply in support of its Motion to Consolidate and
3 Stay ("Reply Brief").

4 3. On Wednesday, August 15, 2012, the City filed its Reply Brief.

5 4. On August 16, 2012, we received discovery served by counsel for the *Harris*
6 plaintiffs (Wylie, McBride, Platten & Renner), Special Interrogatories – Set One, directed to the
7 City. I have attached a true and correct copy of these interrogatories to this declaration as Exhibit
8 A.

9 5. Also on August 16, 2012, we received discovery served by counsel for the *Sapien*
10 plaintiffs (again, Wylie, McBride, Platten & Renner), Special Interrogatories – Set Two, directed
11 to the City. I have attached a true and correct copy of these interrogatories to this declaration as
12 Exhibit B.

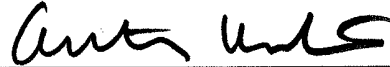
13 6. On August 21, 2012, AFSCME served discovery on the City. This discovery
14 consists of the following: (1) First Set of Requests For Admissions [**88 Requests**] and Declaration
15 Regarding Necessity Of Addition Requests For Admission [attached hereto as Exhibit C]; (2)
16 Form Interrogatories, Set One [attached hereto as Exhibit D] ; (3) First Set of Special
17 Interrogatories [**86 Interrogatories**] and Declaration Regarding Necessity of Additional
18 Interrogatories [attached hereto as Exhibit E]; and (4) First Set of Requests For the Production of
19 Documents [attached hereto as Exhibit F].

20 7. I did not receive AFSCME's discovery until August 21, 2012. I note that the
21 City's opposition to the AFSCME's federal motion to dismiss was due on August 20, 2012. It
22 appears that AFSCME's discovery was served so as to arrive after the City had filed its Reply
23 Brief in this motion and its Opposition to the unions' Motions to Dismiss filed in the federal
24 declaratory relief action brought by the City.

25 8. I have attached as Exhibit G a true and correct copy of the City's brief In
26 Opposition to Motions To Dismiss, filed on August 21, 2012, in the federal declaratory relief
27 action, City of San Jose v. SJPOA, et al, No. C12-02904-LHK.

28 I declare under penalty of perjury under the laws of the State of California that the

1 foregoing is true and correct and that I executed this declaration on August 22, 2012 in Oakland,
2 California.

3
4 

5 Arthur A. Hartinger

6
7 1956260.1
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 JOHN McBRIDE, SBN 36458
2 CHRISTOPHER E. PLATTEN, SBN 111971
3 MARK S. RENNER, ESQ., SBN 121008
4 Wylie, McBride, Platten & Renner
5 2125 Canoas Garden Avenue Suite 120
6 San Jose, CA 95125
7 Telephone: 408.979.2920
8 Facsimile: 408.979.2934
9 cplatten@wmprlaw.com

10 Attorney for Plaintiffs and Petitioners
11 TERESA HARRIS, JON REGER,
12 and MOSES SERRANO

13
14 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SANTA CLARA**
16

17 TERESA HARRIS, JON REGER and
18 MOSES SERRANO

19 Plaintiffs and Petitioners,

20 vs.

21 CITY OF SAN JOSE, DEBRA FIGONE, in
22 her official capacity as City Manager of the
23 CITY OF SAN JOSE, and Does 1 through
24 15,

25 Defendants and Respondents.

26 THE BOARD OF ADMINISTRATION FOR
27 THE 1975 FEDERATED CITY
28 EMPLOYEES' RETIREMENT PLAN,

Necessary Party In Interest

Case No.: 1-12-CV-226570

**SPECIAL INTERROGATORIES,
SET ONE**

PROPOUNDING PARTY: Plaintiffs and Petitioners, TERESA HARRIS, JON REGER AND
MOSES SERRANO

RESPONDING PARTY: Defendant, CITY OF SAN JOSE

SET NUMBER: One (1)

Plaintiffs requests that defendant answer under oath, pursuant to Code of Civil
Procedure §2030.010 et seq. of the State of California, the following interrogatories within
thirty (30) days after service thereof.

In answering these interrogatories, furnish all information available to you, including

1 information in the possession of your attorneys of investigators for your attorneys, not
2 merely information known of your own personal knowledge.

3 If you cannot answer the following interrogatories in full, after exercising due
4 diligence to secure the information to do so, so state, and answer to the extent possible,
5 specifying your inability to answer the remainder, and stating whatever information or
6 knowledge you have concerning the unanswered portion.

7 DEFINITIONS

8 (a) **INCIDENT** includes circumstances and events surrounding the alleged
9 accident, injury, or other occurrence or breach of contract giving rise to this action or
10 proceeding.

11 (b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents,
12 their employees, your attorneys, your accountants, your investigators, and anyone else
13 acting on your behalf.

14 (c) **PERSON** includes a natural person, firm, association, organization, partnership,
15 business, trust, corporation, or public entity.

16 (d) **WRITING** includes the original or copy of handwriting, typewriting, electronic
17 mail, printing, photostating, photographing, and every other means or recording upon any
18 tangible thing, any form of communication or representation, including letters, words,
19 pictures, sounds, and symbols or combinations of them. (Evidence Code Section 250).

20 INTERROGATORIES

21 INTERROGATORY NO. 1:

22 Do you contend that the City of San Jose has legal authority to amend the ratio of
23 the current service contributions of the City and the members of City of San Jose Police
24 and Fire Department Retirement Plan set forth in Section 3.28.860 of the San Jose
25 Municipal Code?
26
27
28

INTERROGATORY NO. 2:

If your answer to the foregoing interrogatory is in the affirmative set forth all facts upon which you base your contention.

INTERROGATORY NO. 3:

If you answer to Interrogatory No. 1 is in the affirmative, identify all documents upon which you rely in making said contention.

INTERROGATORY NO. 4:

Do you contend that there are any limits on the extent to which the City of San Jose is legally empowered to amend the ratio of the current service contributions of the City and the members of the City of San Jose Police and Fire Department Retirement Plan set forth in Section 3.28.860 of the San Jose City Charter.

INTERROGATORY NO. 5:


If your answer to the foregoing interrogatory is in the affirmative set forth all facts upon which you base your contention.

INTERROGATORY NO. 6:

If you answer to Interrogatory No. 4 is in the affirmative, identify all documents upon which you rely in making said contention.

Dated: 8/14/12

WYLIE, McBRIDE, PLATTEN & RENNER



JOHN McBRIDE, Attorney for Plaintiff and Petitioners
TERESA HARRIS, JON REGER and MOSES
SERRANO

I:\0078\72281\discovery\spec Interogs #1 city.docx

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
(C.C.P. 1013(3) & 1011)
(Revised 1/1/88)

I, the undersigned, say:

That I am now and at all times herein mentioned a citizen of the United States and a resident of Santa Clara County, California. I am over the age of eighteen years and not a party to the within action. My address is 2125 Canoas Garden Ave., Suite 120, San Jose, CA 95125. On this date I served

SPECIAL INTERROGATORIES, SET ONE

 X by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail at San Jose, Santa Clara County, California, addressed as set forth below. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

 by personal delivery to the address listed below.

 by FAX (Telecopier) - as follows: I personally sent to the addressee's telecopier number a true copy of the above-described document(s). I verified transmission and called the addressee and verified receipt. Thereafter I placed a true copy in an envelope addressed and mailed as indicated above.

 by placing a true copy thereof, enclosed in a sealed U.P.S. overnight-mail envelope with our firm's account number for U.P.S. pick-up and addressed as set forth below.

SEE ATTACHED MAILING LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of August, 2012, at San Jose, California.



Judith L. Casella

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Teague P. Paterson, Esq. Vishtasp M. Soroushian, Esq. Beeson, Tayer & Bodine, APC 483 Ninth Street, 2nd Floor Oakland, CA 94607-4051 (510) 625-8275 – Facsimile tpaterson@beesontayer.com vsoroushian@beesontayer.com</p> <p><i>Attorneys for Municipal Employees Federation, AFSCME Local 101</i></p>	<p>Arthur A. Hartinger, Esq. Jennifer L. Nock, Esq. Linda M. Ross, Esq. Michael C. Hughes, Esq. Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 (510) 444-1108 – Facsimile ahartinger@meyersnave.com inock@meyersnave.com lrrs@meyersnave.com mhughes@meyersnave.com</p> <p><i>Attorneys for The City of San Jose and Debra Figone</i></p>
<p>Harvey L. Leiderman, Esq. Reed Smith, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105 (415) 391-8269 - Facsimile hleiderman@reedsmith.com</p> <p><i>Attorneys for The Board of Administration for the 1961 San Jose Police and Fire Department Retirement Plan and The Board of Administration for the 1975 Federated City Employees' Retirement Plan</i></p>	<p>Gregg McLean Adam, Esq. Jonathan Yank, Esq. Gonzalo Martinez, Esq. Jennifer S. Stoughton, Esq. Amber L. West, Esq. Carroll, Burdick & McDonough LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104 (415) 989-0932 – Facsimile gadam@cbmlaw.com jyank@cbmlaw.com awest@cbmlaw.com jstoughton@cbmlaw.com gmartinez@cbmlaw.com</p> <p><i>Attorneys for San Jose Police Officers' Association</i></p>

Received

AUG 16 2012

meyers|have

WYLIE, MCBRIDE,
PLATTEN & GRENNER
A Law Corporation

2125 CANDOAS GARDEN AVENUE, SUITE 120
SAN JOSE, CALIFORNIA 95125

SAN JOSE CA 95125

24 54 43 2002

135.025



MAILED #00124 CODE 95125

K. Thomas / S. Haley

ARTHUR A HARTINGER ESQ
JENNIFER L NOCK ESQ
LINDA M ROSS ESQ
MICHAEL C HUGHES ESQ
MEYERS NAVE RIBACK SILVER & WILSON
555 12TH STREET SUITE 1600
OAKLAND CA 94607

Received

AUG 16 2002

MEYERS NAVE

94607409575

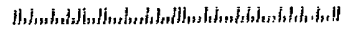


EXHIBIT B

1 JOHN McBRIDE, ESQ., SBN 36458
2 CHRISTOPHER E. PLATTEN, ESQ., SBN 111971
3 MARK S. RENNER, ESQ., SBN 121008
4 Wylie, McBride, Platten & Renner
5 2125 Canoas Garden Avenue Suite 120
San Jose, CA 95125
Telephone: 408.979.2920
Facsimile: 408.979.2934
cplatten@wmpirlaw.com

6 Attorney for Plaintiffs and Petitioners
7 ROBERT SAPIEN, MARY KATHLEEN McCARTHY,
THANH HO, RANDY SEKANY and KEN HEREDIA

8
9 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SANTA CLARA

11
12 ROBERT SAPIEN, MARY KATHLEEN
13 McCARTHY, THANH HO, RANDY
SEKANY and KEN HEREDIA

14 Plaintiffs and Petitioners,

15 vs.

16 CITY OF SAN JOSE, DEBRA FIGONE, in
17 her official capacity as City Manager of the
CITY OF SAN JOSE, and Does 1 through
15,

18 Defendants and Respondents.

19 THE BOARD OF ADMINISTRATION FOR
20 THE 1961 SAN JOSE POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN,

21 Necessary Party in Interest

Case No. 112CV225928

**SPECIAL INTERROGATORIES,
SET TWO**

22
23 PROPOUNDING PARTY: Plaintiffs and Petitioners, ROBERT SAPIEN, MARY
24 KATHLEEN McCARTHY, THANH HO, RANDY SEKANY
AND KEN HEREDIA

25 RESPONDING PARTY: Defendant, CITY OF SAN JOSE

26 SET NUMBER: Two (2)

1 Plaintiffs requests that defendant answer under oath, pursuant to Code of Civil
2 Procedure §2030.010 et seq. of the State of California, the following interrogatories within
3 thirty (30) days after service thereof.

4 In answering these interrogatories, furnish all information available to you, including
5 information in the possession of your attorneys or investigators for your attorneys, not
6 merely information known of your own personal knowledge.

7 If you cannot answer the following interrogatories in full, after exercising due
8 diligence to secure the information to do so, so state, and answer to the extent possible,
9 specifying your inability to answer the remainder, and stating whatever information or
10 knowledge you have concerning the unanswered portion.

11 DEFINITIONS

12 (a) **INCIDENT** includes circumstances and events surrounding the alleged
13 accident, injury, or other occurrence or breach of contract giving rise to this action or
14 proceeding.

15 (b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents,
16 their employees, your attorneys, your accountants, your investigators, and anyone else
17 acting on your behalf.

18 (c) **PERSON** includes a natural person, firm, association, organization, partnership,
19 business, trust, corporation, or public entity.

20 (d) **WRITING** includes the original or copy of handwriting, typewriting, electronic
21 mail, printing, photostating, photographing, and every other means or recording upon any
22 tangible thing, any form of communication or representation, including letters, words,
23 pictures, sounds, and symbols or combinations of them. (Evidence Code Section 250).

24 INTERROGATORIES

25 INTERROGATORY NO. 10:

26 Do you contend that the City of San Jose has legal authority to amend the ratio of
27 the current service contributions of the City and the members of City of San Jose Police
28

1 and Fire Department Retirement Plan set forth in Section 3.36.1520 of the San Jose
2 Municipal Code?

3 **INTERROGATORY NO. 11:**

4 If your answer to the foregoing interrogatory is in the affirmative set forth all facts
5 upon which you base your contention.

6 **INTERROGATORY NO. 12:**

7 If you answer to Interrogatory No. 1 is in the affirmative, identify all documents upon
8 which you rely in making said contention.

9 **INTERROGATORY NO. 13:**

10 Do you contend that there are any limits on the extent to which the City of San Jose
11 is legally empowered to amend the ratio of the current service contributions of the City and
12 the members of the City of San Jose Police and Fire Department Retirement Plan set forth
13 in Section 3.36.1520 of the San Jose City Charter.

14 **INTERROGATORY NO. 14:**

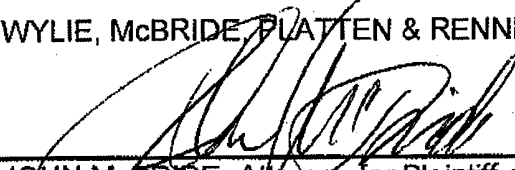
15 If your answer to the foregoing interrogatory is in the affirmative set forth all facts
16 upon which you base your contention.

17 **INTERROGATORY NO. 15:**

18 If you answer to Interrogatory No. 4 is in the affirmative, identify all documents upon
19 which you rely in making said contention.

20
21 Dated: 8/14/12

WYLIE, McBRIDE, PLATTEN & RENNER

22
23 
24 JOHN McBRIDE, Attorney for Plaintiff and Petitioners
25 ROBERT SAPIEN, MARY KATHLEEN McCARTHY,
26 THANH HO, RANDY SEKANY and KEN HEREDIA

27 I:\0230\72256\discovery\spec interrogs #2 city.docx
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
(C.C.P. 1013(3) & 1011)
(Revised 1/1/88)

I, the undersigned, say:

That I am now and at all times herein mentioned a citizen of the United States and resident of Santa Clara County, California. I am over the age of eighteen years and not a party to this action. My business address is 2125 Canoas Garden Ave., Suite 120, San Jose, CA 95125. On this date I served

SPECIAL INTERROGATORIES, SET TWO

X by placing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid, in the United States Post Office mail at San Jose, Santa Clara County, California, addressed as set forth below. I am familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

___ by personal delivery to the address listed below.

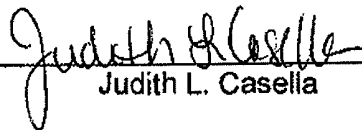
___ by FAX (Telecopier) - as follows: I personally sent to the addressee's telecopier number a true copy of the above-described document(s). Thereafter I placed a true copy in an envelope addressed and mailed as indicated above.

___ by placing a true copy thereof, enclosed in a sealed U.P.S. overnight-mail envelope with our firm's account number for U.P.S. pick-up and addressed as set forth below.

___ by E-Mail - as follows: I personally sent to the addressee's e-mail address a true copy of the above-described document(s). Thereafter I placed a true copy in an envelope addressed and mailed as indicated above.

SEE ATTACHED MAILING LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of August, 2012, at San Jose, California.


Judith L. Casella

Teague P. Paterson, Esq.
Vishtasp M. Soroushian, Esq.
Beeson, Tayer & Bodine, APC
483 Ninth Street, 2nd Floor
Oakland, CA 94607-4051
(510) 625-8275 – Facsimile
tpaterson@beesonstayer.com
vsoroushian@beesonstayer.com

*Attorneys for Municipal Employees
Federation, AFSCME Local 101*

Arthur A. Hartinger, Esq.
Jennifer L. Nock, Esq.
Linda M. Ross, Esq.
Michael C. Hughes, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607
(510) 444-1108 – Facsimile
ahartinger@meyersnave.com
inock@meyersnave.com
lorrs@meyersnave.com
mhughes@meyersnave.com

*Attorneys for The City of San Jose and
Debra Figone*

Harvey L. Leiderman, Esq.
Reed Smith, LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
(415) 391-8269 - Facsimile
hleiderman@reedsmith.com

*Attorneys for The Board of
Administration for the 1961 San Jose
Police and Fire Department Retirement
Plan and The Board of Administration
for the 1975 Federated City Employees'
Retirement Plan*

Gregg McLean Adam, Esq.
Jonathan Yank, Esq.
Gonzalo Martinez, Esq.
Jennifer S. Stoughton, Esq.
Amber L. West, Esq.
Carroll, Burdick & McDonough LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104
(415) 989-0932 – Facsimile
gadam@cbmlaw.com
jyank@cbmlaw.com
awest@cbmlaw.com
stoughton@cbmlaw.com
gmartinez@cbmlaw.com

*Attorneys for San Jose Police Officers'
Association*

Received

AUG 16 2012

meyers|nave

WYLLIE, MCERIDE
WATTEN & CRENNER

A Law Corporation

2125 CANOAS GARDEN AVENUE, SUITE 120
SAN JOSE, CALIFORNIA 95125

123

SAN JOSE, CA 95125

MARK, ARIZONA



02 10
\$ 000.650
0002175334 AUG 14 2012
PAID TO FROM ZIP CODE 95125

135.024

K. Thomas / J. Foley

ARTHUR A HARTINGER ESQ

JENNIFER L NOCK ESQ

LINDA M ROSS ESQ

MICHAEL C HUGHES ESQ

MEYERS NAVE RIBACK SILVER & WILSON

555 12TH STREET SUITE 1500

OAKLAND CA 94607

Received

AUG 14 2012

meyers|nave

94607409575

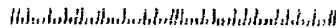


EXHIBIT C

1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
3 JOHN E. VARGA, SBN 248895
4 BEESON, TAYER & BODINE, APC
5 483 Ninth Street, 2nd Floor
6 Oakland, CA 94607
7 Telephone: (510) 625-9700
8 Facsimile: (510) 625-8275
9 Email: tpaterson@beesontayer.com
vsoroushian@beesontayer.com
jvarga@beesontayer.com

Attorneys for Plaintiff
AFSCME LOCAL 101

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SANTA CLARA**
12 **AT SAN JOSE**

13 AFSCME LOCAL 101,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE,

17 Defendant.

Case No. 1-12-CV-227864

**PLANTIFF'S FIRST SET OF REQUESTS
FOR ADMISSIONS TO CITY OF SAN
JOSE**

18 **PROPOUNDING PARTY:** Plaintiff, AFSCME LOCAL 101

19 **RESPONDING PARTY:** Defendant, CITY OF SAN JOSE

20 **SET NO.:** ONE (1)

21 **PRELIMINARY STATEMENT**

22 Pursuant to Code of Civil Procedure sections 2033.010 *et seq.*, 2033.210 *et seq.* and 2033.410
23 *et seq.*, the above-named is hereby requested to admit, within 30 days of service, the truth of each of
24 the facts set forth below and the genuineness of each document.

25 **INSTRUCTIONS**

26
27 1. Please be advised that pursuant to Code of Civil Procedure section 2033.220 (a), each
28 answer in a response to requests for admission shall be as complete and straightforward as the

1 information reasonably available to the responding party permits, and (b) each answer shall: (1)
2 admit so much of the matter involved in the request as is true, either as expressed in the request itself
3 or as reasonably and clearly qualified by the responding party; (2) deny so much of the matter
4 involved in the request as is untrue; (3) specify so much of the matter involved in the request as to the
5 truth of which the responding party lacks sufficient information or knowledge. If a responding party
6 gives lack of information or knowledge as a reason for a failure to admit all or part of a request for
7 admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the
8 particular request has been made, and that the information known or readily obtainable is insufficient
9 to enable that party to admit the matter.

10 2. Further, please be advised that Code of Civil Procedure section 2033.420 states that
11 "[i]f a party fails to admit the genuineness of any document or the truth of any matter when requested
12 to do so under this chapter, and if the party requesting that admission thereafter proves the
13 genuineness of that document or the truth of that matter, the party requesting the admission may
14 move the court for an order requiring the party to whom the request was directed to pay the
15 reasonable expenses incurred in making that proof, including reasonable attorney's fees."

16 DEFINITIONS

17 As used herein the terms:

18 1. "You," "Your," and "City," mean defendant CITY OF SAN JOSE., and/or its agents,
19 employees, or anyone else acting on its behalf.

20 2. "Person" means in the singular as well as in the plural, any natural person, firm,
21 association, partnership, corporation, governmental agency, office or bureau, or any other type of
22 entity.

23 3. "Defendant" means CITY OF SAN JOSE.

24 4. "Plaintiff" refers to AFSCME LOCAL 101, and its affiliates MEF and CEO.

28 5. "Complaint" means the Complaint filed in the above-referenced matter by AFSCME
26 Local 101 on or about July 5, 2012.

27 6. "Miscellaneous employees," "employees," or "members" means miscellaneous
28 employees employed by the City of San Jose and who are members of the City's Federated City

1 Employees Retirement Plan and are or have been employed within the bargaining units represented
2 by AFSCME Local 101 and its affiliates.

3 7. "Retirement System," "Federated System," or "System" means the Federated City
4 Employees Retirement System providing for certain benefits for covered employees and the terms
5 and conditions of the plan benefits prescribed, and adopted under, these auspices.

6 8. "Measure B" means the act entitled, "The Sustainable Retirement Benefits and
7 Compensation Act," placed on the ballot as "Measure B" for the June 5, 2012, special election.

8 9. "VEP" means the voluntary election procedure contained in Measure B with respect to
9 current employees.

10 6. "Document" means all written, printed, typewritten, handwritten, recorded, tape
11 recorded, graphic or photographic matter, or any other tangible thing used as a means of
12 communication in any respect, however produced or reproduced. This definition includes, but is not
13 limited to, all originals, copies and drafts (whether different from the original by reason of notations
14 or other markings or not) and any of the following: (a) correspondence, notes, diaries, journals,
15 statistics, calendar or Daytimer notations, letters, telegrams, minutes, transcripts, contracts, reports,
16 studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intra-
17 office communications, notations of any sort (including telephone messages, transcriptions of
18 voicemail messages, notes of conversations, meetings, or other communications), bulletins, printed
19 matter, computer printouts, teletypes, telefax, invoices, work sheets, and all drafts, alterations,
20 modifications, changes and amendments to any of the foregoing; (b) graphic or aural records or
21 representations of any kind, including but not limited to photocopies, charts, graphs, microfilm,
22 microfiche, videotape or other recordings; and (c) electronic, mechanical, or electrical records or
23 representations of any kind, including but not limited to e-mail messages, computer tapes, cassettes,
24 hard or floppy diskettes, hard drives, servers and any other media on which data can be stored. In
28 **lieu of identifying a document**, you may attach a true and correct copy of the document to your
26 responses to the interrogatories.

27 7. "Individual" shall include first and last name, address, and telephone number; or the
28 name, address and telephone number of a business entity employing any individual or individuals

1 when the particular name of the individuals are unknown.

2 8. "Identify" when used in the context of identifying an individual or individuals, shall
3 include the provision of the individual(s) full name, last known home and business addresses, and last
4 known home and business telephone numbers.

5 9. "Identify" when used in the context of identifying a document or writing, shall include
6 a detailed description of each document, including but not limited to the name of the author(s), name
7 of recipient(s) (including those receiving a copy), length of the document, type of the document, and
8 date of generation, in addition to the provision of the name of the individual(s) who you believe do or
9 may have possession of the original or a copy of each document, including the individual(s) last
10 known home and business addresses and last known home and business telephone numbers.

11 10. "Identify" with regard to an entity means to provide the entity's name, status (e.g.,
12 governmental subdivision, government agency, corporation, partnership, joint venture, sole
13 proprietorship, etc.) state of domicile, address of its principal place of business, and identify the
14 individual(s) who are its officers or managing agents.

15 11. "Identify" with regard to an event means to identify the individual(s) who witnessed
16 the event, the date the event occurred, the location of the event, a summary of the event, identify the
17 individual(s) who participated in the event, and identify any writings which refer or relate to the
18 event.

19 REQUESTS FOR ADMISSIONS

20 REQUEST FOR ADMISSION NO. 1:

21 YOU ARE REQUESTED TO ADMIT THAT the benefits that derive from the System are
22 deferred compensation.
23

24 REQUEST FOR ADMISSION NO. 2:

25 YOU ARE REQUESTED TO ADMIT THAT employees of San Jose have a right to receive
26 the benefits that derive from the System under the terms and conditions in effect at the time such
27 employee accepted employment with San Jose.
28

1 **REQUEST FOR ADMISSION NO. 3:**

2 YOU ARE REQUESTED TO ADMIT THAT San Jose employees' right to the benefits
3 established under the System vested upon such employees' commencing employment with the City.

4 **REQUEST FOR ADMISSION NO. 4:**

5 YOU ARE REQUESTED TO ADMIT THAT Measure B results in a reduction of wages for
6 miscellaneous employees.

7 **REQUEST FOR ADMISSION NO. 5:**

8 YOU ARE REQUESTED TO ADMIT THAT Measure B results in a shifting of liabilities
9 from the City to miscellaneous employees.

10 **REQUEST FOR ADMISSION NO. 6:**

11 YOU ARE REQUESTED TO ADMIT THAT Measure B results in an excise on current and
12 future City employees.

13 **REQUEST FOR ADMISSION NO. 7:**

14 YOU ARE REQUESTED TO ADMIT THAT retirement benefits were used to entice
15 employees to work for San Jose.

16 **REQUEST FOR ADMISSION NO. 8:**

17 YOU ARE REQUESTED TO ADMIT THAT Measure B reduces or eliminates portions of
18 employee retirement benefits.

19 **REQUEST FOR ADMISSION NO. 9:**

20 YOU ARE REQUESTED TO ADMIT THAT Measure B imposes a condition subsequent on
21 the ability to receive already earned retirement benefits.

22 **REQUEST FOR ADMISSION NO. 10:**

23 YOU ARE REQUESTED TO ADMIT THAT since May 1965, and prior to Measure B, the
24 San Jose City Charter provided for a defined benefit pension plan.

28 **REQUEST FOR ADMISSION NO. 11:**

26 YOU ARE REQUESTED TO ADMIT THAT since May 1965, and prior to Measure B, the
27 San Jose City Charter set forth a duty on the part of the City to create, establish, and maintain a
28 retirement plan or plans for all San Jose officers and employees.

1 **REQUEST FOR ADMISSION NO. 12:**

2 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, the San Jose City Charter
3 prescribed the minimum benefits due to its non-excluded miscellaneous employees and required the
4 City Council to Provide for pension and other benefits through ordinance.

5 **REQUEST FOR ADMISSION NO. 13:**

6 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, the City adopted and
7 established a Federated City Employees Retirement System ("System") providing for certain benefits
8 for covered employees.

9 **REQUEST FOR ADMISSION NO. 14:**

10 YOU ARE REQUESTED TO ADMIT THAT City Ordinances and California state laws
11 provide for the establishment of a Retirement Board to oversee and administer pension benefits for
12 covered employees.

13 **REQUEST FOR ADMISSION NO. 15:**

14 YOU ARE REQUESTED TO ADMIT THAT full-time miscellaneous employees become
15 members of the System upon acceptance of employment with the City.

16 **REQUEST FOR ADMISSION NO. 16:**

17 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, the System was funded by
18 contributions from both members and the City under the proportions set forth in the City Charter.

19 **REQUEST FOR ADMISSION NO. 17:**

20 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, the City Charter provided
21 that the funding of benefits under the System was to be computed annually with respect to the normal
22 cost of each employee-member's annual benefit accrual.

23 **REQUEST FOR ADMISSION NO. 18:**

24 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, the City has been
28 responsible for ensuring payment of shortfalls between the System's assets and the actuarially-
26 determined liability for all benefits owed by the System.

1 **REQUEST FOR ADMISSION NO. 19:**

2 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, members of the Federated
3 System have never been required to make contributions into the System to cover their own or others'
4 unfunded liabilities.

5 **REQUEST FOR ADMISSION NO. 20:**

6 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, the City promised to
7 provide under the System to Petitioner's members a defined benefit consisting of 2.5% of
8 compensation multiplied by the number of years of employment for which the employee is eligible
9 for credit under the System.

10 **REQUEST FOR ADMISSION NO. 21:**

11 YOU ARE REQUESTED TO ADMIT THAT member-employees of the System become
12 eligible to receive the defined benefit consisting of 2.5% of compensation multiplied by the number
13 of years of employment for which the employee is eligible for credit under the System on the earlier
14 of reaching 55 years of age and completing five years of service, or completing a full 30 years of
15 service regardless of age.

16 **REQUEST FOR ADMISSION NO. 22:**

17 YOU ARE REQUESTED TO ADMIT THAT under the System, members who become
18 disabled and unable to perform their duties are entitled to a disability retirement benefit.

19 **REQUEST FOR ADMISSION NO. 23:**

20 YOU ARE REQUESTED TO ADMIT THAT the City and the system provide for payment
21 and funding of health benefits for System retirees.

22 **REQUEST FOR ADMISSION NO. 24:**

23 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, the City promised to
24 provide under the System to Petitioner's members a defined benefit that included a guaranteed cost of
28 living adjustment ("COLA") consisting of 3% annual increase in the pension benefit.

1 **REQUEST FOR ADMISSION NO. 25:**

2 YOU ARE REQUESTED TO ADMIT THAT Measure B provides the City Council with
3 discretion to eliminate or suspend COLA for a period of five years and thereafter may reduce by half
4 the COLA benefit, or continue the suspension.

5 **REQUEST FOR ADMISSION NO. 26:**

6 YOU ARE REQUESTED TO ADMIT THAT the System's COLA component serves to
7 ensure that a retiree's pension keeps pace with inflation.

8 **REQUEST FOR ADMISSION NO. 27:**

9 YOU ARE REQUESTED TO ADMIT THAT Measure B reduces vested retirement benefits
10 in the form of permitting elimination and reduction of COLA for both current and future retirees.

11 **REQUEST FOR ADMISSION NO. 28:**

12 YOU ARE REQUESTED TO ADMIT THAT Measure B eliminates the System's
13 Supplemental Benefit Retiree Benefit Reserve ("SRBR").

14 **REQUEST FOR ADMISSION NO. 29:**

15 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, in the event the System
16 had a balance in its operating account after payment of administrative costs and expenses for the
17 applicable fiscal year, the Board of Retirement was required to transfer ten percent of the excess
18 earnings to the SRBR and to transfer the remaining ninety percent of the excess earnings to the
19 general reserve, with interest on funds and excess funds deposited in the SRBR.

20 **REQUEST FOR ADMISSION NO. 30:**

21 YOU ARE REQUESTED TO ADMIT THAT funds in the SRBR were held for the benefit of
22 retired members of the System, survivors of members, and survivors of retired members.

23 **REQUEST FOR ADMISSION NO. 31:**

24 YOU ARE REQUESTED TO ADMIT THAT Measure B eliminates the SRBR and transfers
28 assets held in the SRBR account to the System's general fund.

26 **REQUEST FOR ADMISSION NO. 32:**

27 YOU ARE REQUESTED TO ADMIT THAT Measure B requires that in order for employees
28 to retain their vested entitlement to receive pension benefits, employees must agree to assume a *pro*

1 *rata* portion of up to 50% of the City's obligation for the System's unfunded liabilities, in addition to
2 employees' obligation to make payment of the normal cost of annual accrued benefits.

3 **REQUEST FOR ADMISSION NO. 33:**

4 YOU ARE REQUESTED TO ADMIT THAT an obligation to assume half of the City's
5 responsibility for financing the System's unfunded liabilities equals approximately 16% of
6 employees' gross pay.

7 **REQUEST FOR ADMISSION NO. 34:**

8 YOU ARE REQUESTED TO ADMIT THAT under Measure B employees that decline the
9 obligation to assume a *pro rata* portion of up to 50% of the City's obligation for the System's
10 unfunded liabilities are placed in to a "Voluntary Election Plan ("VEP").

11 **REQUEST FOR ADMISSION NO. 35:**

12 YOU ARE REQUESTED TO ADMIT THAT employees placed in to a VEP are subject to
13 reduction of their vested right to receive pension benefits and promised levels of retirement security.

14 **REQUEST FOR ADMISSION NO. 36:**

15 YOU ARE REQUESTED TO ADMIT THAT the VEP imposes a lower accrual rate for
16 benefits for employees placed in to the plan.

17 **REQUEST FOR ADMISSION NO. 37:**

18 YOU ARE REQUESTED TO ADMIT THAT the VEP imposes a later retirement age for
19 employees placed in to the plan.

20 **REQUEST FOR ADMISSION NO. 38:**

21 YOU ARE REQUESTED TO ADMIT THAT the VEP imposes an increased number of
22 years-of-service retirement eligibility gradually each year, indefinitely, and with no limit for
23 employees placed in to the plan.

24 **REQUEST FOR ADMISSION NO. 39:**

28 YOU ARE REQUESTED TO ADMIT THAT the VEP reduces and caps the annual Cost of
26 Living Adjustment for employees placed in to the plan.

1 **REQUEST FOR ADMISSION NO. 40:**

2 YOU ARE REQUESTED TO ADMIT THAT the VEP defines the term "final compensation"
3 to exclude the employee's compensation that would otherwise have been included in computing the
4 employee's pension for employees placed in to the plan.

5 **REQUEST FOR ADMISSION NO. 41:**

6 YOU ARE REQUESTED TO ADMIT THAT the VEP defines the criteria applied to the
7 ability to receive disability benefits in a more restrictive manner than the criteria applied to
8 employees prior to being placed in to the plan.

9 **REQUEST FOR ADMISSION NO. 42:**

10 YOU ARE REQUESTED TO ADMIT THAT the VEP does not present members with a
11 voluntary option to join the plan because the exercise of the choice to be placed in the VEP is neither
12 volitional nor free from coercion of duress.

13 **REQUEST FOR ADMISSION NO. 43:**

14 YOU ARE REQUESTED TO ADMIT THAT both the VEP and the System as amended by
15 Measure B, require members to accept a reduction in the vested right to receive promised retirement
16 benefits upon retirement.

17 **REQUEST FOR ADMISSION NO. 44:**

18 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, the City's miscellaneous
19 employees had the right to retire on the earlier of reaching age fifty-five or working for the City for
20 thirty years.

21 **REQUEST FOR ADMISSION NO. 45:**

22 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, a member's annual service
23 retirement benefit was computed with respect to his/her final compensation, which was defined by
24 San Jose Municipal Code section 3.28.030.11, as the "highest average annual compensation earnable
28 by the member during any period of the twelve consecutive months of federated city service...."

26 **REQUEST FOR ADMISSION NO. 46:**

27 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, a member's full retirement
28 benefit was the result of computing 2.5% of the member's final compensation (as defined in SJMC

§ 3.28.030.11) per year of service, defined by San Jose Municipal Code section 3.28.6809(B) as
“1,739 hours of federated city service rendered by the member in any calendar year.”

REQUEST FOR ADMISSION NO. 47:

YOU ARE REQUESTED TO ADMIT THAT Measure B defines the term “disability” for
current employees that reduces those employees’ eligibility for disability retirement under the
System.

REQUEST FOR ADMISSION NO. 48:

YOU ARE REQUESTED TO ADMIT THAT Measure B reduces the right to disability
retirement benefits for employees that are enrolled into the VEP.

REQUEST FOR ADMISSION NO. 49:

YOU ARE REQUESTED TO ADMIT THAT Measure B reduces the maximum benefit that a
disabled retiree may receive for employees enrolled into the VEP.

REQUEST FOR ADMISSION NO. 50:

YOU ARE REQUESTED TO ADMIT THAT Measure B reduces the categories of
compensation for purposes of computing disability benefits for employees enrolled into the VEP.

REQUEST FOR ADMISSION NO. 51:

YOU ARE REQUESTED TO ADMIT THAT Measure B reduces the annual cost of living
adjustment for employees eligible for disability benefits and enrolled into the VEP.

REQUEST FOR ADMISSION NO. 52:

YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, miscellaneous employees
qualified for disability retirement if his/her disability rendered the member physically or mentally
incapable to continue to satisfactorily assume the responsibilities and perform the duties and
functions of the position then held by him/her and of any other position in the same classification of
positions to which the City may offer to transfer him/her, as determined by the retirement board on
the basis of competent medical opinion.

1 **REQUEST FOR ADMISSION NO. 53:**

2 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, disabled employees who
3 could fill positions in the same classification or positions to which the City may offer to transfer
4 them, were entitled to disability retirement if no such position existed or was open.

5 **REQUEST FOR ADMISSION NO. 54:**

6 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, members who retired
7 because of a service-connected disability were permitted an annual allowance of no less than forty
8 percent of their compensation plus 2.5% for each year of service beyond sixteen years of service, to a
9 maximum of seventy-five percent of the member's final compensation.

10 **REQUEST FOR ADMISSION NO. 55:**

11 YOU ARE REQUESTED TO ADMIT THAT prior to Measure B, disability retirees received
12 an annual three percent cost of living adjustment.

13 **REQUEST FOR ADMISSION NO. 56:**

14 YOU ARE REQUESTED TO ADMIT THAT Measure B substantially impairs the eligibility
15 to receive benefits provided under the System's disability retirement provisions.

16 **REQUEST FOR ADMISSION NO. 57:**

17 YOU ARE REQUESTED TO ADMIT THAT Measure B substantially impairs the
18 substantive benefits provided under the System's disability retirement provisions.

19 **REQUEST FOR ADMISSION NO. 58:**

20 YOU ARE REQUESTED TO ADMIT THAT Measure B redefines the term "disability" for
21 the purposes of restricting eligibility to receive a disability retirement.

22 **REQUEST FOR ADMISSION NO. 59:**

23 YOU ARE REQUESTED TO ADMIT THAT Measure B narrows the definition of the term
24 "disability" to those employees whose disability has lasted or is expected to last for at least one year
28 or to result in death and cannot perform any other jobs described in the City's classification plan
26 because of his or her medical condition and regardless of whether there are any other positions
27 available at the time a determination is made.
28

1 **REQUEST FOR ADMISSION NO. 60:**

2 YOU ARE REQUESTED TO ADMIT THAT under Measure B, a member who suffers a
3 debilitating injury may be denied a disability benefit if she can theoretically perform the function of
4 any classification, even if there is no vacancy available to accommodate such an employee.

5 **REQUEST FOR ADMISSION NO. 61:**

6 YOU ARE REQUESTED TO ADMIT THAT after Measure B, obligations and debts incurred
7 by the City are shifted onto the Petitioner's members.

8 **REQUEST FOR ADMISSION NO. 62:**

9 YOU ARE REQUESTED TO ADMIT THAT miscellaneous employees of the City have a
10 vested interest in annual three percent increases to their pension benefit after retirement.

11 **REQUEST FOR ADMISSION NO. 63:**

12 YOU ARE REQUESTED TO ADMIT THAT members of the System do not participate in
13 the federal Old Age Survivor and Disability Insurance program administered by the Social Security
14 Administration.

15 **REQUEST FOR ADMISSION NO. 64:**

16 YOU ARE REQUESTED TO ADMIT THAT Measure B's authorization to the San Jose City
17 Council to suspend cost of living adjustment payments applies equally to current retirees and current
18 employees who retire prior to the adoption of any resolution suspending the cost of living adjustment
19 payments.

20 **REQUEST FOR ADMISSION NO. 65:**

21 YOU ARE REQUESTED TO ADMIT THAT Measure B, if implemented, would impair
22 vested contractual rights with respect to miscellaneous employees' retirement benefits.

23 **REQUEST FOR ADMISSION NO. 66:**

24 YOU ARE REQUESTED TO ADMIT THAT Measure B violates the California
25 Constitution's prohibition on bills of attainder, as it shifts the burden of financing public debt upon a
26 small class of private parties

1 **REQUEST FOR ADMISSION NO. 67:**

2 YOU ARE REQUESTED TO ADMIT THAT Measure B violates the California
3 Constitution's prohibition of retroactive laws as it subjects employees to liabilities previously
4 incurred by the City, and obligates active employees to fund liabilities previously incurred by the
5 City with respect to its retiree health obligations.

6 **REQUEST FOR ADMISSION NO. 68:**

7 YOU ARE REQUESTED TO ADMIT THAT if implemented, Measure B's reduction of
8 salaries in the event that an employee brings a successful challenge to Measure B's enforceability is a
9 violation of the California Constitution's right to petition.

10 **REQUEST FOR ADMISSION NO. 69:**

11 YOU ARE REQUESTED TO ADMIT THAT if implemented, Measure B would impose an
12 excise on current and future City employees without a rational basis in violation of the California
13 Constitution's equal protection clause.

14 **REQUEST FOR ADMISSION NO. 70:**

15 YOU ARE REQUESTED TO ADMIT THAT when the City adopted Measure B it violated
16 its promise to City employees that they would not be liable to finance public debt, or the System's or
17 Plan's unfunded liabilities.

18 **REQUEST FOR ADMISSION NO. 71:**

19 YOU ARE REQUESTED TO ADMIT THAT when the City adopted Measure B it violated
20 its promise to City employees that they would earn benefits and the right to receive certain level of
21 benefits.

22 **REQUEST FOR ADMISSION NO. 72:**

23 YOU ARE REQUESTED TO ADMIT THAT when the City adopted Measure B it should
24 have reasonably known that City employees accepted and continued employment with the City in
25 reliance on the City's promise that City employees would not be liable to finance public debt, or the
26 System's or Plan's unfunded liabilities.

27

28

1 **REQUEST FOR ADMISSION NO. 73:**

2 YOU ARE REQUESTED TO ADMIT THAT when the City adopted Measure B it should
3 have reasonably known that City employees accepted and continued employment with the City in
4 reliance on the City's promise that City employees would earn benefits and have the right to receive
5 certain level of benefits.

6 **REQUEST FOR ADMISSION NO. 74:**

7 YOU ARE REQUESTED TO ADMIT THAT Measure B constitutes an unconstitutional
8 taking of private property for public use without providing the affected employees with just
9 compensation.

10 **REQUEST FOR ADMISSION NO. 75:**

11 YOU ARE REQUESTED TO ADMIT THAT Measure B constitutes an unconstitutional
12 taking of private property for public use without affording the affected employees with substantive
13 due process.

14 **REQUEST FOR ADMISSION NO. 76:**

15 YOU ARE REQUESTED TO ADMIT THAT Measure B violates the California Constitution
16 because it violates the "California Pension Protection Act."

17 **REQUEST FOR ADMISSION NO. 77:**

18 YOU ARE REQUESTED TO ADMIT THAT Measure B imposes conditions subsequent on
19 the right to receive retirement benefits already earned.

20 **REQUEST FOR ADMISSION NO. 78:**

21 YOU ARE REQUESTED TO ADMIT THAT Local 101 of the American Federation of State,
22 County, and Municipal Employees ("AFSCME") is the recognized exclusive bargaining
23 representative of non-managerial miscellaneous employees of the City and who are members of the
24 City's Federated City Employees Retirement Plan.

28 **REQUEST FOR ADMISSION NO. 79:**

26 YOU ARE REQUESTED TO ADMIT THAT City of San Jose is a chartered municipal
27 corporation, and an instrumentality of the State of California, which operates under the authority of
28 the California Constitution and the San Jose City Charter.

1 **REQUEST FOR ADMISSION NO. 80:**

2 YOU ARE REQUESTED TO ADMIT THAT from 2007 to present, Debra Fignone has been
3 the San Jose City Manager.

4 **REQUEST FOR ADMISSION NO. 81:**

5 YOU ARE REQUESTED TO ADMIT THAT execution of Measure B is one of the San Jose
6 City Manager's duties.

7 **REQUEST FOR ADMISSION NO. 82:**

8 YOU ARE REQUESTED TO ADMIT THAT in a Memorandum dated December 1, 2011,
9 City Mayor Chuck Reed submitted to the City Council a recommendation that the City Council
10 refrain from declaring a "Fiscal and Service Level Emergency."

11 **REQUEST FOR ADMISSION NO. 83:**

12 YOU ARE REQUESTED TO ADMIT THAT in a Memorandum dated December 1, 2011,
13 City Mayor Chuck Reed submitted to the City Council a recommendation that the City Council adopt
14 a resolution calling for a municipal election on June 5, 2012, for the purpose of placing on the ballot
15 an amendment to the City's Charter provisions governing City employee retirement security.

16 **REQUEST FOR ADMISSION NO. 84:**

17 YOU ARE REQUESTED TO ADMIT THAT in a memorandum dated February 21, 2012,
18 City Manager Debra Figone proposed to the Mayor and City Council an Act providing for
19 amendments to the City Charter provisions governing City employee retirement security and attached
20 to that memorandum the terms of the Act proposed for placement on the June 5, 2012, ballot.

21 **REQUEST FOR ADMISSION NO. 85:**

22 YOU ARE REQUESTED TO ADMIT THAT City Manager Debra Figone's February 21,
23 2012, memorandum to the Mayor and City Council proposed language for an Act that would
24 authorize promulgation of ordinances for the purpose of reducing City employee retirement security
28 and reducing wages for City employees who choose to retain the pre-promulgation level of retirement
26 security.

1 **REQUEST FOR ADMISSION NO. 86:**

2 YOU ARE REQUESTED TO ADMIT THAT on March 6, 2012, the City Council adopted
3 the proposal presented in Fignone's February 21, 2012, memorandum and directed the placement of
4 the Act attached to the February 21, 2012, memorandum on the June 5, 2012 ballot.

5 **REQUEST FOR ADMISSION NO. 87:**

6 YOU ARE REQUESTED TO ADMIT THAT on June 5, 2012, a special election was held the
7 result of which was the passage of Measure B by referendum.

8 **REQUEST FOR ADMISSION NO. 88:**

9 YOU ARE REQUESTED TO ADMIT THAT on July 5, 2012, the City Clerk certified the
10 results of the June 5, 2012, election, including passage of Measure B.

11
12 Dated: August 20, 2012

BEESON, TAYER & BODINE, APC

13
14 By: 

TEAGUE P. PATERSON
VISITASP M. SOROUSHIAN
JOHN E. VARGA

Attorneys for AFSCME LOCAL 101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

SANTA CLARA COUNTY SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 483 Ninth Street, 2nd Floor, Oakland, CA 94607. On this day, I served the foregoing Document(s):

PLAINTIFF'S REQUEST FOR ADMISSIONS

☒ By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

☐ By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☐ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

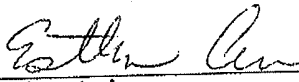
Debra Figone
City Manager, City of San José
City Manager's Office
200 East Santa Clara Street
San José CA 95113

City of San José
Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113

Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

Board of Administration for Federated
City Employees Retirement Plan
1737 N. First St, Suite 580
San Jose, CA 95112

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, August 20, 2012.



Esther Aviva

Received
AUG 21 2012
meyers|nave



BEESON, TAYER & BODINE
ROSS HOUSE, SUITE 200
483 NINTH STREET
OAKLAND, CALIFORNIA 94607-4051



To:

K. Thomas / J. Foley

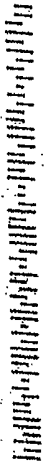
Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

ADDRESS SERVICE REQUESTED

meyers nave

AUG 21 2012

RECEIVED



1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
3 JOHN E. VARGA, SBN 248895
4 BEESON, TAYER & BODINE, APC
5 483 Ninth Street, 2nd Floor
6 Oakland, CA 94607
7 Telephone: (510) 625-9700
8 Facsimile: (510) 625-8275
9 Email: tpaterson@beesontayer.com
10 vsoroushian@beesontayer.com
11 jvarga@beesontayer.com

12 Attorneys for Plaintiff
13 AFSCME LOCAL 101

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
AT SAN JOSE**

AFSCME LOCAL 101,

Plaintiff,

v.

CITY OF SAN JOSE,

Defendant.

Case No. 1-12-CV-227864

**DECLARATION OF JOHN E. VARGA
REGARDING NECESSITY OF
ADDITIONAL REQUESTS FOR
ADMISSION**

I, JOHN E. VARGA, declare as follows:

1. I am an attorney at law duly license to practice before all the courts in the State of California, and I am an associate in the law firm of Beeson, Tayer & Bodine, attorneys of record for Plaintiff, AFSCME Local 101.

2. I am thoroughly familiar with the contents of this file and if called to testify as to the facts contained in this declaration I could, and would, testify to those facts based upon my own personal knowledge.

3. This declaration is submitted in support of the necessity of Plaintiff's additional discovery requests.

4. I am propounding to Defendant, City of San Jose, the attached set of requests for admission.

5. I have not previously propounded requests for admission to this party. Concurrently with the requests for admission, I am propounding upon Defendant a request for production of documents, special interrogatories, and a set of form interrogatories.

6. This set of requests for admission contains a total of 88 requests for admission. This will cause the total number of requests for admission served on Defendant to exceed the number of requests for admission permitted by California Code of Civil Procedure section 2033.030 by 53 requests.

7. I have personally examined each of the requests in this set of requests for admission.

8. This number of requests for admission is warranted under CCP 2033.040 because of the complexity and seriousness of the claims and issues raised in this lawsuit, as well as the number of existing and potential factual issues in this complicated case involving seven causes of action alleging violations of the California Constitution, common law principles of promissory estoppel and equitable estoppel, and requests for declaratory and injunctive relief. The case involves a novel and complex local ordinance and analysis and application of the state's vested rights doctrine. This number of requests for admission provides Defendant with an expedient method to conduct an inquiry, investigation, or search files or records to supply the information sought.

9. None of the questions in this set of requests for admission are being propounded for any improper purpose, such as to harass the party, or the party's attorney, to whom it is directed, or to cause any undue delay or needless increase in the cost of litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of August, 2012, at Oakland, CA.

~~JOHN E. VARGA~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

SANTA CLARA COUNTY SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 483 Ninth Street, 2nd Floor, Oakland, CA 94607. On this day, I served the foregoing Document(s):

**DECLARATION OF JOHN E. VARGA REGARDING
NECESSITY FOR ADDITIONAL REQUESTS FOR ADMISSION**

☒ By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

☐ By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☐ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Debra Figone
City Manager, City of San José
City Manager's Office
200 East Santa Clara Street
San José CA 95113

City of San José
Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113

Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

Board of Administration for Federated
City Employees Retirement Plan
1737 N. First St, Suite 580
San Jose, CA 95112

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, August 20, 2012.



Esther Aviva

Received
AUG 21 2012
meyers|nave



BEESON, TAYER & BODINE
ROSS HOUSE, SUITE 200
483 NINTH STREET
OAKLAND, CALIFORNIA 94607-4051



To:

K. Thomas / J. Foley

Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

ADDRESS SERVICE REQUESTED

meayers / nave

AUG 21 2012

RECEIVED

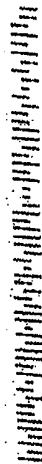


EXHIBIT D

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Teague P. Paterson (#226659); John E. Varga (#248895) Vishtasp M. Soroushian (#278895) Beeson, Tayer & Bodine 483 Ninth St. Suite 200 Oakland, CA 94607 TELEPHONE NO.: (510) 625-9700 FAX NO. (Optional): (510) 625-8275 E-MAIL ADDRESS (Optional): tpaterson@beesonayer.com; jvarga@beesonayer.com; vsoroushian@beesonayer.com ATTORNEY FOR (Name): Plaintiff, AFSCME, Local 101	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA 191 N. First St. San Jose, CA 95113	
SHORT TITLE OF CASE: AFSCME, LOCAL 101 v. CITY OF SAN JOSE	
FORM INTERROGATORIES—GENERAL Asking Party: Plaintiff, AFSCME, Local 101 Answering Party: Defendant, City of San Jose Set No.: One (1)	CASE NUMBER: I-12-CV-227864

Sec. 1. Instructions to All Parties

(a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.

(b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.

(c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds \$25,000. Separate interrogatories, *Form Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is \$25,000 or less; however, those interrogatories may also be used in unlimited civil cases.

(b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.

(d) The interrogatories in section 16.0, Defendant's Contentions—Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.

(h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE)

(SIGNATURE)

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) (Check one of the following):

- ☐ (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

- ☒ (2) **INCIDENT** means (insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)");
Decision to place and placement of "Measure B" on June 5, 2012, ballot and implementation of "Measure B," as alleged in the Complaint.

(b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

CONTENTS

- 1.0 Identity of Persons Answering These Interrogatories
- 2.0 General Background Information—Individual
- 3.0 General Background Information—Business Entity
- 4.0 Insurance
- 5.0 [Reserved]
- 6.0 Physical, Mental, or Emotional Injuries
- 7.0 Property Damage
- 8.0 Loss of Income or Earning Capacity
- 9.0 Other Damages
- 10.0 Medical History
- 11.0 Other Claims and Previous Claims
- 12.0 Investigation—General
- 13.0 Investigation—Surveillance
- 14.0 Statutory or Regulatory Violations
- 15.0 Denials and Special or Affirmative Defenses
- 16.0 Defendant's Contentions Personal Injury
- 17.0 Responses to Request for Admissions
- 18.0 [Reserved]
- 19.0 [Reserved]
- 20.0 How the Incident Occurred—Motor Vehicle
- 25.0 [Reserved]
- 30.0 [Reserved]
- 40.0 [Reserved]
- 50.0 Contract
- 60.0 [Reserved]
- 70.0 Unlawful Detainer [See separate form DISC-003]
- 101.0 Economic Litigation [See separate form DISC-004]
- 200.0 Employment Law [See separate form DISC-002]
- Family Law [See separate form FL-145]

1.0 Identity of Persons Answering These Interrogatories

- ☒ 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

2.0 General Background Information—Individual

- ☐ 2.1 State:
- (a) your name;
 - (b) every name you have used in the past; and
 - (c) the dates you used each name.
- ☐ 2.2 State the date and place of your birth.
- ☐ 2.3 At the time of the **INCIDENT**, did you have a driver's license? If so state:
- (a) the state or other issuing entity;
 - (b) the license number and type;
 - (c) the date of issuance; and
 - (d) all restrictions.
- ☐ 2.4 At the time of the **INCIDENT**, did you have any other permit or license for the operation of a motor vehicle? If so, state:
- (a) the state or other issuing entity;
 - (b) the license number and type;
 - (c) the date of issuance; and
 - (d) all restrictions.
- ☐ 2.5 State:
- (a) your present residence **ADDRESS**;
 - (b) your residence **ADDRESSES** for the past five years; and
 - (c) the dates you lived at each **ADDRESS**.
- ☐ 2.6 State:
- (a) the name, **ADDRESS**, and telephone number of your present employer or place of self-employment; and
 - (b) the name, **ADDRESS**, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.
- ☐ 2.7 State:
- (a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended, beginning with high school;
 - (b) the dates you attended;
 - (c) the highest grade level you have completed; and
 - (d) the degrees received.
- ☐ 2.8 Have you ever been convicted of a felony? If so, for each conviction state:
- (a) the city and state where you were convicted;
 - (b) the date of conviction;
 - (c) the offense; and
 - (d) the court and case number.
- ☐ 2.9 Can you speak English with ease? If not, what language and dialect do you normally use?
- ☐ 2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?

- ☐ 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON**? If so, state:
- (a) the name, **ADDRESS**, and telephone number of that **PERSON**; and
 - (b) a description of your duties.
- ☐ 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**? If so, for each person state:
- (a) the name, **ADDRESS**, and telephone number;
 - (b) the nature of the disability or condition; and
 - (c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT**.
- ☐ 2.13 Within 24 hours before the **INCIDENT** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
- (a) the name, **ADDRESS**, and telephone number;
 - (b) the nature or description of each substance;
 - (c) the quantity of each substance used or taken;
 - (d) the date and time of day when each substance was used or taken;
 - (e) the **ADDRESS** where each substance was used or taken;
 - (f) the name, **ADDRESS**, and telephone number of each person who was present when each substance was used or taken; and
 - (g) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information—Business Entity

- ☐ 3.1 Are you a corporation? If so, state:
- (a) the name stated in the current articles of incorporation;
 - (b) all other names used by the corporation during the past 10 years and the dates each was used;
 - (c) the date and place of incorporation;
 - (d) the **ADDRESS** of the principal place of business; and
 - (e) whether you are qualified to do business in California.
- ☐ 3.2 Are you a partnership? If so, state:
- (a) the current partnership name;
 - (b) all other names used by the partnership during the past 10 years and the dates each was used;
 - (c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
 - (d) the name and **ADDRESS** of each general partner; and
 - (e) the **ADDRESS** of the principal place of business.
- ☐ 3.3 Are you a limited liability company? If so, state:
- (a) the name stated in the current articles of organization;
 - (b) all other names used by the company during the past 10 years and the date each was used;
 - (c) the date and place of filing of the articles of organization;
 - (d) the **ADDRESS** of the principal place of business; and
 - (e) whether you are qualified to do business in California.

- ☐ 3.4 Are you a joint venture? If so, state:
- (a) the current joint venture name;
 - (b) all other names used by the joint venture during the past 10 years and the dates each was used;
 - (c) the name and **ADDRESS** of each joint venturer; and
 - (d) the **ADDRESS** of the principal place of business.
- ☐ 3.5 Are you an unincorporated association? If so, state:
- (a) the current unincorporated association name;
 - (b) all other names used by the unincorporated association during the past 10 years and the dates each was used; and
 - (c) the **ADDRESS** of the principal place of business.
- ☐ 3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
- (a) the name;
 - (b) the dates each was used;
 - (c) the state and county of each fictitious name filing; and
 - (d) the **ADDRESS** of the principal place of business.
- ☐ 3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:
- (a) identify the license or registration;
 - (b) state the name of the public entity; and
 - (c) state the dates of issuance and expiration.

4.0 Insurance

- ☒ 4.1 At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:
- (a) the kind of coverage;
 - (b) the name and **ADDRESS** of the insurance company;
 - (c) the name, **ADDRESS**, and telephone number of each named insured;
 - (d) the policy number;
 - (e) the limits of coverage for each type of coverage contained in the policy;
 - (f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
 - (g) the name, **ADDRESS**, and telephone number of the custodian of the policy.
- ☒ 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, specify the statute.

5.0 [Reserved]

6.0 Physical, Mental, or Emotional Injuries

- ☐ 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 6.2 through 6.7.)
- ☐ 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.

☐ 6.3 Do you still have any complaints that you attribute to the **INCIDENT**? If so, for each complaint state:

- (a) a description;
- (b) whether the complaint is subsiding, remaining the same, or becoming worse; and
- (c) the frequency and duration.

☐ 6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT**? If so, for each **HEALTH CARE PROVIDER** state:

- (a) the name, **ADDRESS**, and telephone number;
- (b) the type of consultation, examination, or treatment provided;
- (c) the dates you received consultation, examination, or treatment; and
- (d) the charges to date.

☐ 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**? If so, for each medication state:

- (a) the name;
- (b) the **PERSON** who prescribed or furnished it;
- (c) the date it was prescribed or furnished;
- (d) the dates you began and stopped taking it; and
- (e) the cost to date.

☐ 6.6 Are there any other medical services necessitated by the injuries that you attribute to the **INCIDENT** that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:

- (a) the nature;
- (b) the date;
- (c) the cost; and
- (d) the name, **ADDRESS**, and telephone number of each provider.

☐ 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**? If so, for each injury state:

- (a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
- (b) the complaints for which the treatment was advised; and
- (c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage

☐ 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**? If so, for each item of property:

- (a) describe the property;
- (b) describe the nature and location of the damage to the property;

- (c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and
- (d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

☐ 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:

- (a) the name, **ADDRESS**, and telephone number of the **PERSON** who prepared it and the date prepared;
- (b) the name, **ADDRESS**, and telephone number of each **PERSON** who has a copy of it; and
- (c) the amount of damage stated.

☐ 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:

- (a) the date repaired;
- (b) a description of the repair;
- (c) the repair cost;
- (d) the name, **ADDRESS**, and telephone number of the **PERSON** who repaired it;
- (e) the name, **ADDRESS**, and telephone number of the **PERSON** who paid for the repair.

8.0 Loss of Income or Earning Capacity

☐ 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 8.2 through 8.8).

☐ 8.2 State:

- (a) the nature of your work;
- (b) your job title at the time of the **INCIDENT**; and
- (c) the date your employment began.

☐ 8.3 State the last date before the **INCIDENT** that you worked for compensation.

☐ 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

☐ 8.5 State the date you returned to work at each place of employment following the **INCIDENT**.

☐ 8.6 State the dates you did not work and for which you lost income as a result of the **INCIDENT**.

☐ 8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.

☐ 8.8 Will you lose income in the future as a result of the **INCIDENT**? If so, state:

- (a) the facts upon which you base this contention;
- (b) an estimate of the amount;
- (c) an estimate of how long you will be unable to work; and
- (d) how the claim for future income is calculated.

9.0 Other Damages

- ☐ 9.1 Are there any other damages that you attribute to the **INCIDENT**? If so, for each item of damage state:
- (a) the nature;
 - (b) the date it occurred;
 - (c) the amount; and
 - (d) the name, **ADDRESS**, and telephone number of each **PERSON** to whom an obligation was incurred.

- ☐ 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, describe each document and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

10.0 Medical History

- ☐ 10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**? If so, for each state:
- (a) a description of the complaint or injury;
 - (b) the dates it began and ended; and
 - (c) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

- ☐ 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. (You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.)

- ☐ 10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:
- (a) the date and the place it occurred;
 - (b) the name, **ADDRESS**, and telephone number of any other **PERSON** involved;
 - (c) the nature of any injuries you sustained;
 - (d) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** who you consulted or who examined or treated you; and
 - (e) the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims

- ☐ 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:
- (a) the date, time, and place and location (closest street **ADDRESS** or intersection) of the **INCIDENT** giving rise to the action, claim, or demand;
 - (b) the name, **ADDRESS**, and telephone number of each **PERSON** against whom the claim or demand was made or the action filed;

- (c) the court, names of the parties, and case number of any action filed;
- (d) the name, **ADDRESS**, and telephone number of any attorney representing you;
- (e) whether the claim or action has been resolved or is pending; and
- (f) a description of the injury.

- ☐ 11.2 In the past 10 years have you made a written claim or demand for workers' compensation benefits? If so, for each claim or demand state:
- (a) the date, time, and place of the **INCIDENT** giving rise to the claim;
 - (b) the name, **ADDRESS**, and telephone number of your employer at the time of the injury;
 - (c) the name, **ADDRESS**, and telephone number of the workers' compensation insurer and the claim number;
 - (d) the period of time during which you received workers' compensation benefits;
 - (e) a description of the injury;
 - (f) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who provided services; and
 - (g) the case number at the Workers' Compensation Appeals Board.

12.0 Investigation—General

- ☒ 12.1 State the name, **ADDRESS**, and telephone number of each individual:
- (a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
 - (b) who made any statement at the scene of the **INCIDENT**;
 - (c) who heard any statements made about the **INCIDENT** by any individual at the scene; and
 - (d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).

- ☒ 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:
- (a) the name, **ADDRESS**, and telephone number of the individual interviewed;
 - (b) the date of the interview; and
 - (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.

- ☒ 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:
- (a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
 - (b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
 - (c) the date the statement was obtained; and
 - (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.

- ☒ 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries? If so, state:

- (a) the number of photographs or feet of film or videotape;
- (b) the places, objects, or persons photographed, filmed, or videotaped;
- (c) the date the photographs, films, or videotapes were taken;
- (d) the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes; and
- (e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the photographs, films, or videotapes.

- ☒ 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) concerning the **INCIDENT**? If so, for each item state:

- (a) the type (i.e., diagram, reproduction, or model);
- (b) the subject matter; and
- (c) the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☒ 12.6 Was a report made by any **PERSON** concerning the **INCIDENT**? If so, state:

- (a) the name, title, identification number, and employer of the **PERSON** who made the report;
- (b) the date and type of report made;
- (c) the name, **ADDRESS**, and telephone number of the **PERSON** for whom the report was made; and
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the report.

- ☐ 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**? If so, for each inspection state:

- (a) the name, **ADDRESS**, and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310); and
- (b) the date of the inspection.

13.0 Investigation—Surveillance

- ☐ 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance state:

- (a) the name, **ADDRESS**, and telephone number of the individual or party;
- (b) the time, date, and place of the surveillance;
- (c) the name, **ADDRESS**, and telephone number of the individual who conducted the surveillance; and
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of any surveillance photograph, film, or videotape.

- ☐ 13.2 Has a written report been prepared on the surveillance? If so, for each written report state:

- (a) the title;
- (b) the date;
- (c) the name, **ADDRESS**, and telephone number of the individual who prepared the report; and
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

14.0 Statutory or Regulatory Violations

- ☐ 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT**? If so, identify the name, **ADDRESS**, and telephone number of each **PERSON** and the statute, ordinance, or regulation that was violated.

- ☐ 14.2 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT**? If so, for each **PERSON** state:

- (a) the name, **ADDRESS**, and telephone number of the **PERSON**;
- (b) the statute, ordinance, or regulation allegedly violated;
- (c) whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered; and
- (d) the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

15.0 Denials and Special or Affirmative Defenses

- ☐ 15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:

- (a) state all facts upon which you base the denial or special or affirmative defense;
- (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
- (c) identify all **DOCUMENTS** and other tangible things that support your denial or special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

16.0 Defendant's Contentions—Personal Injury

- ☐ 16.1 Do you contend that any **PERSON**, other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff? If so, for each **PERSON**:

- (a) state the name, **ADDRESS**, and telephone number of the **PERSON**;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.2 Do you contend that plaintiff was not injured in the **INCIDENT**? If so:

- (a) state all facts upon which you base your contention;
- (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (c) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**? If so, for each injury:

(a) identify it;
 (b) state all facts upon which you base your contention;
 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**? If so:

(a) identify each service;
 (b) state all facts upon which you base your contention;
 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:

(a) identify each cost;
 (b) state all facts upon which you base your contention;
 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:

(a) identify each part of the loss;
 (b) state all facts upon which you base your contention;
 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery Proceedings thus far in this case was not caused by the **INCIDENT**? If so:

(a) identify each item of property damage;
 (b) state all facts upon which you base your contention;
 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:

(a) identify each cost item;
 (b) state all facts upon which you base your contention;
 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:

(a) the source of each **DOCUMENT**;
 (b) the date each claim arose;
 (c) the nature of each claim; and
 (d) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

- ☐ 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310)? If so, for each plaintiff state:

(a) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
 (b) a description of each **DOCUMENT**; and
 (c) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

17.0 Responses to Request for Admissions

- ☒ 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:

(a) state the number of the request;
 (b) state all facts upon which you base your response;
 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
 (d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

18.0 [Reserved]

19.0 [Reserved]

20.0 How the Incident Occurred—Motor Vehicle

- ☐ 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).

- ☐ 20.2 For each vehicle involved in the **INCIDENT**, state:

(a) the year, make, model, and license number;
 (b) the name, **ADDRESS**, and telephone number of the driver;

- (c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;
- (d) the name, **ADDRESS**, and telephone number of each registered owner;
- (e) the name, **ADDRESS**, and telephone number of each lessee;
- (f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder; and
- (g) the name of each owner who gave permission or consent to the driver to operate the vehicle.
- ☐ 20.3 State the **ADDRESS** and location where your trip began and the **ADDRESS** and location of your destination.
- ☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.
- ☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT**.
- ☐ 20.6 Did the **INCIDENT** occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.
- ☐ 20.7 Was there a traffic signal facing you at the time of the **INCIDENT**? If so, state:
- your location when you first saw it;
 - the color;
 - the number of seconds it had been that color; and
 - whether the color changed between the time you first saw it and the **INCIDENT**.
- ☐ 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:
- just before the **INCIDENT**;
 - at the time of the **INCIDENT**; and (c) just after the **INCIDENT**.
- ☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**? If so:
- identify the vehicle;
 - identify each malfunction or defect;
 - state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
 - state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.
- ☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT**? If so:
- identify the vehicle;
 - identify each malfunction or defect;
 - state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
- (d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.
- ☐ 20.11 State the name, **ADDRESS**, and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT**.
- 25.0 [Reserved]
- 30.0 [Reserved]
- 40.0 [Reserved]
- 50.0 Contract
- ☒ 50.1 For each agreement alleged in the pleadings:
- identify each **DOCUMENT** that is part of the agreement and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
 - state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
 - identify all **DOCUMENTS** that evidence any part of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
 - identify all **DOCUMENTS** that are part of any modification to the agreement, and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
 - state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;
 - identify all **DOCUMENTS** that evidence any modification of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.
- ☐ 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.
- ☒ 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.
- ☒ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis of the termination.
- ☒ 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.
- ☒ 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.
- 60.0 [Reserved]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

SANTA CLARA COUNTY SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 483 Ninth Street, 2nd Floor, Oakland, CA 94607. On this day, I served the foregoing Document(s):

FORM INTERROGATORIES

☒ By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

☐ By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☐ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Debra Figone
City Manager, City of San José
City Manager's Office
200 East Santa Clara Street
San José CA 95113

City of San José
Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113

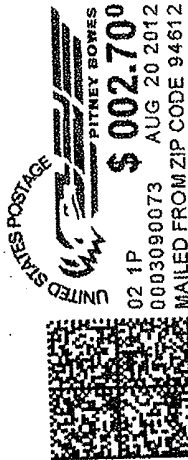
Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

Board of Administration for Federated
City Employees Retirement Plan
1737 N. First St, Suite 580
San Jose, CA 95112

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, August 20, 2012.



Esther Aviva



BEESON, TAYER & BODINE
ROSS HOUSE, SUITE 200
483 NINTH STREET
OAKLAND, CALIFORNIA 94607-4051



To:

K. Thomas / J. Foley

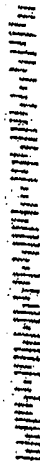
Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

ADDRESS SERVICE REQUESTED

Meyers Nave

AUG 21 2012

RECEIVED



Received
AUG 21 2012
meyers/nave

EXHIBIT E

1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
3 JOHN E. VARGA, SBN 248895
4 BEESON, TAYER & BODINE, APC
5 483 Ninth Street, 2nd Floor
6 Oakland, CA 94607
7 Telephone: (510) 625-9700
8 Facsimile: (510) 625-8275
9 Email: tpaterson@beesontayer.com
vsoroushian@beesontayer.com
jvarga@beesontayer.com

Attorneys for Plaintiff
AFSCME LOCAL 101

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
AT SAN JOSE**

AFSCME LOCAL 101,

Plaintiff,

v.

CITY OF SAN JOSE,

Defendant.

Case No. 1-12-CV-227864

**PLAINTIFF'S FIRST SET OF SPECIAL
INTERROGATORIES TO CITY OF SAN
JOSE**

PROPOUNDING PARTY: Plaintiff, AFSCME LOCAL 101

RESPONDING PARTY: Defendant, CITY OF SAN JOSE

SET NO.: ONE (1)

I. PRELIMINARY STATEMENT/DEFINITIONS

Pursuant to section 2030.010 *et seq.* of the California Code of Civil Procedure, Plaintiffs request that you answer the following set of interrogatories within 30 days of service.

In answering these interrogatories, please furnish all information available to you, including information in the possession of your attorneys and agents and not merely such information known of your personal knowledge. If you cannot answer an interrogatory in full after exercising due diligence to secure the requested information please state so and answer to the extent possible, specifying your

1 inability to answer the remainder, and state the investigation you made to ascertain the answer and
2 whatever information or knowledge you have concerning the unanswered portion.

3 As used herein the terms:

4 1. "You," "Your," and "City," mean Defendant CITY OF SAN JOSE., and/or its agents,
5 employees, or anyone else acting on its behalf.

6 2. "Person" means in the singular as well as in the plural, any natural person, firm,
7 association, partnership, corporation, governmental agency, office or bureau, or any other type of
8 entity.

9 3. "Defendant" means CITY OF SAN JOSE.

10 4. "Plaintiffs" refer to AFSCME LOCAL 101, and its affiliates MEF and CEO.

11 5. "Retirement System," "Federated System," or "System" means the Federated City
12 Employees Retirement System providing for certain benefits for covered employees and the terms
13 and conditions of the plan benefits prescribed, and adopted thereunder, with respect to members of
14 AFSCME 101.

15 6. "Measure B" means the act entitled, "The Sustainable Retirement Benefits and
16 Compensation Act," placed on the ballot as "Measure B" for the June 5, 2012, special election.

17 7. "Retirement benefits" means and post-employment benefits, deferred compensation,
18 health and welfare, and pension, or any other form of benefit, provided by the City to employees who
19 are members of AFSCME 101 and its affiliates.

20 8. "Miscellaneous employees," "employees," or "members" means miscellaneous
21 employees employed by the City of San Jose and who are members of the City's Federated City
22 Employees Retirement Plan.

23 9. "Complaint" means the Complaint filed in the above-referenced matter on or about
24 July 5, 2012.

25 10. "Document" means all written, printed, typewritten, handwritten, recorded, tape
26 recorded, graphic or photographic matter, or any other tangible thing used as a means of
27 communication in any respect, however produced or reproduced. This definition includes, but is not
28 limited to, all originals, copies and drafts (whether different from the original by reason of notations

1 or other markings or not) and any of the following: (a) correspondence, notes, diaries, journals,
2 statistics, calendar or Daytimer notations, letters, telegrams, minutes, transcripts, contracts, reports,
3 studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intra-
4 office communications, notations of any sort (including telephone messages, transcriptions of
5 voicemail messages, notes of conversations, meetings, or other communications), bulletins, printed
6 matter, computer printouts, teletypes, telefax, invoices, work sheets, and all drafts, alterations,
7 modifications, changes and amendments to any of the foregoing; (b) graphic or aural records or
8 representations of any kind, including but not limited to photocopies, charts, graphs, microfilm,
9 microfiche, videotape or other recordings; and (c) electronic, mechanical, or electrical records or
10 representations of any kind, including but not limited to e-mail messages, computer tapes, cassettes,
11 hard or floppy diskettes, hard drives, servers and any other media on which data can be stored. **In**
12 **lieu of identifying a document**, you may attach a true and correct copy of the document to your
13 responses to the interrogatories.

14 11. "Individual" shall include first and last name, address, and telephone number; or the
15 name, address and telephone number of any entity employing any individual or individuals when the
16 particular name of the individuals are unknown.

17 12. "Identify" when used in the context of identifying an individual or individuals, shall
18 include the provision of the individual(s) full name, last known home and business addresses, and last
19 known home and business telephone numbers.

20 13. "Identify" when used in the context of identifying a document or writing, shall include
21 a detailed description of each document, including but not limited to the name of the author(s), name
22 of recipient(s) (including those receiving a copy), length of the document, type of the document, and
23 date of generation, in addition to the provision of the name of the individual(s) who you believe do or
24 may have possession of the original or a copy of each document, including the individual(s) last
25 known home and business addresses and last known home and business telephone numbers.

26 14. "Identify" with regard to an entity means to provide the entity's name, status (e.g.,
27 governmental subdivision, government agency, corporation, partnership, joint venture, sole
28

1 proprietorship, etc.) state of domicile, address of its principal place of business, and identify the
2 individual(s) who are its officers or managing agents.

3 15. "Identify" with regard to an event means to identify the individual(s) who witnessed
4 the event, the date the event occurred, the location of the event, a summary of the event, identify the
5 individual(s) who participated in the event, and identify any writings which refer or relate to the
6 event.

7 II. INTERROGATORIES

8 INTERROGATORY NO. 1:

9 Do you contend that the City's yearly cost to pay for employee retirement benefits has
10 increased since 1998?

11 INTERROGATORY NO. 2:

12 If you contend that the City's yearly cost to pay for employee retirement benefits has
13 increased since 1998, please state all facts that support your contention.

14 INTERROGATORY NO. 3:

15 If you contend that the City's yearly cost to pay for employee retirement benefits has
16 increased since 1998, please identify all witnesses with knowledge of facts that support your
17 contention.

18 INTERROGATORY NO. 4:

19 If you contend that the City's yearly cost to pay for employee retirement benefits has
20 increased since 1998, please identify all documents that support your contention.

21 INTERROGATORY NO. 5:

22 Do you contend that the City's ability to provide essential services has been negatively
23 impacted by the cost of retirement benefits to City employees?

24 INTERROGATORY NO. 6:

25 If you contend that the City's ability to provide essential services has been negatively
26 impacted by the cost of retirement benefits to City employees, please state all facts that support your
27 contention.

1 **INTERROGATORY NO. 7:**

2 If you contend that the City's ability to provide essential services has been negatively
3 impacted by the cost of retirement benefits to City employees, please identify all witnesses with
4 knowledge of facts that support your contention.

5 **INTERROGATORY NO. 8:**

6 If you contend that the City's ability to provide essential services has been negatively
7 impacted by the cost of retirement benefits to City employees, please identify all documents that
8 support your contention.

9 **INTERROGATORY NO. 9:**

10 Do you contend that there has been an increase in pension costs to the City that is attributable
11 to enhanced pension benefits?

12 **INTERROGATORY NO. 10:**

13 If you contend that there has been an increase in pension costs to the City that is attributable
14 to enhanced pension benefits, please state all facts that support your contention.

15 **INTERROGATORY NO. 11:**

16 If you contend that there has been an increase in pension costs to the City that is attributable
17 to enhanced pension benefits, please identify all witnesses with knowledge of facts that support your
18 contention.

19 **Interrogatory NO. 12:**

20 If you contend that there has been an increase in pension costs to the City that is attributable
21 to enhanced pension benefits, please identify all documents that support your contention.

22 **INTERROGATORY NO. 13:**

23 Do you contend that there has been an increase in pension costs to the City that is attributable
24 to increased employee salaries?

25 **INTERROGATORY NO. 14:**

26 If you contend that there has been an increase in pension costs to the City that is attributable
27 to increased employee salaries, please state all facts that support your contention.
28

1 **INTERROGATORY NO. 15:**

2 If you contend that there has been an increase in pension costs to the City that is attributable
3 to increased employee salaries, please identify all witnesses with knowledge of facts that support
4 your contention.

5 **INTERROGATORY NO. 16:**

6 If you contend that there has been an increase in pension costs to the City that is attributable
7 to increased employee salaries, please identify all documents that support your contention.

8 **INTERROGATORY NO. 17:**

9 Do you contend that there has been an increase in pension costs to the City that is attributable
10 to a downturn in the financial markets?

11 **INTERROGATORY NO. 18:**

12 If you contend that there has been an increase in pension costs to the City that is attributable
13 to a downturn in the financial markets, please state all facts that support your contention.

14 **INTERROGATORY NO. 19:**

15 If you contend that there has been an increase in pension costs to the City that is attributable
16 to a downturn in the financial markets, please identify all witnesses with knowledge of facts that
17 support your contention.

18 **INTERROGATORY NO. 20:**

19 If you contend that there has been an increase in pension costs to the City that is attributable
20 to a downturn in the financial markets, please identify all documents that support your contention.

21 **INTERROGATORY NO. 21:**

22 Do you contend that between fiscal years 1998/1999 and 2009/2010, the City's annual
23 contributions for pension and retirees health benefits increased from approximately \$54 million to
24 \$107 million?

25 **INTERROGATORY NO. 22:**

26 If you contend that between fiscal years 1998/1999 and 2009/2010, the City's annual
27 contributions for pension and retirees health benefits increased from approximately \$54 million to
28 \$107 million, please state all facts that support your contention.

1 **INTERROGATORY NO. 23:**

2 If you contend that between fiscal years 1998/1999 and 2009/2010, the City's annual
3 contributions for pension and retirees health benefits increased from approximately \$54 million to
4 \$107 million, please identify all witnesses with knowledge of facts that support your contention.

5 **INTERROGATORY NO. 24:**

6 If you contend that between fiscal years 1998/1999 and 2009/2010, the City's annual
7 contributions for pension and retirees health benefits increased from approximately \$54 million to
8 \$107 million, please identify all documents that support your contention.

9 **INTERROGATORY NO. 25:**

10 Do you contend that for fiscal year 2012/2013, the City's annual costs are projected to be
11 \$245 million?

12 **INTERROGATORY NO. 26:**

13 If you contend that for fiscal year 2012/2013, the City's annual costs are projected to be \$245
14 million, please state all facts that support your contention.

15 **INTERROGATORY NO. 27:**

16 If you contend that for fiscal year 2012/2013, the City's annual costs are projected to be \$245
17 million, please identify all witnesses with knowledge of facts that support your contention.

18 **INTERROGATORY NO. 28:**

19 If you contend that for fiscal year 2012/2013, the City's annual costs are projected to be \$245
20 million, please identify all documents that support your contention.

21 **INTERROGATORY NO. 29:**

22 Do you contend that for fiscal year 2014/2015, the City's annual contribution to pension and
23 retiree health benefits is projected to be \$319 million?

24 **INTERROGATORY NO. 30:**

25 If you contend that for fiscal year 2014/2015, the City's annual contribution to pension and
26 retiree health benefits is projected to be \$319 million, please state all facts that support your
27 contention.

1 **INTERROGATORY NO. 31:**

2 If you contend that for fiscal year 2014/2015, the City's annual contribution to pension and
3 retiree health benefits is projected to be \$319 million, please identify all witnesses with knowledge of
4 facts that support your contention.

5 **INTERROGATORY NO. 32:**

6 If you contend that for fiscal year 2014/2015, the City's annual contribution to pension and
7 retiree health benefits is projected to be \$319 million, please identify all documents that support your
8 contention.

9 **INTERROGATORY NO. 33:**

10 Do you contend that the City has been forced to layoff employees due to rising cost of
11 providing retirement benefits?

12 **INTERROGATORY NO. 34:**

13 If you contend that the City has been forced to layoff employees due to rising cost of
14 providing retirement benefits, please state all facts that support your contention.

15 **INTERROGATORY NO. 35:**

16 If you contend that the City has been forced to layoff employees due to rising cost of
17 providing retirement benefits, please identify all witnesses with knowledge of facts that support your
18 contention.

19 **INTERROGATORY NO. 36:**

20 If you contend that the City has been forced to layoff employees due to rising cost of
21 providing retirement benefits, please identify all documents that support your contention.

22 **INTERROGATORY NO. 37:**

23 Do you contend that if Measure B is invalidated, it will be necessary for the City to reduce
24 personnel costs through layoffs?

25 **INTERROGATORY NO. 38:**

26 If you contend that if Measure B is invalidated, it will be necessary for the City to reduce
27 personnel costs through layoffs, please state all facts that support your contention.
28

1 **INTERROGATORY NO. 39:**

2 If you contend that if Measure B is invalidated, it will be necessary for the City to reduce
3 personnel costs through layoffs, please identify all witnesses with knowledge of facts that support
4 your contention.

5 **INTERROGATORY NO. 40:**

6 If you contend that if Measure B is invalidated, it will be necessary for the City to reduce
7 personnel costs through layoffs, please identify all documents that support your contention.

8 **INTERROGATORY NO. 41:**

9 Do you contend that if Measure B is invalidated, it will be necessary for the City to reduce
10 personnel costs through reductions in services?

11 **INTERROGATORY NO. 42:**

12 If you contend that if Measure B is invalidated, it will be necessary for the City to reduce
13 personnel costs through reductions in services, please state all facts that support your contention.

14 **INTERROGATORY NO. 43:**

15 If you contend that if Measure B is invalidated, it will be necessary for the City to reduce
16 personnel costs through reductions in services, please identify all witnesses with knowledge of facts
17 that support your contention.

18 **INTERROGATORY NO. 44:**

19 If you contend that if Measure B is invalidated, it will be necessary for the City to reduce
20 personnel costs through reductions in services, please identify all documents that support your
21 contention.

22 **INTERROGATORY NO. 45:**

23 Do you contend that in March 2012, Moody's downgraded San Jose's general obligation and
24 lease revenue bonds due to San Jose's increasing retirement cost burden?

25 **INTERROGATORY NO. 46:**

26 If you contend that in March 2012, Moody's downgraded San Jose's general obligation and
27 lease revenue bonds due to San Jose's increasing retirement cost burden, please state all facts that
28 support your contention.

1 **INTERROGATORY NO. 46:**

2 If you contend that in March 2012, Moody's downgraded San Jose's general obligation and
3 lease revenue bonds due to San Jose's increasing retirement cost burden, please identify all witnesses
4 with knowledge of facts that support your contention.

5 **INTERROGATORY NO. 47:**

6 If you contend that in March 2012, Moody's downgraded San Jose's general obligation and
7 lease revenue bonds due to San Jose's increasing retirement cost burden, please identify all
8 documents that support your contention.

9 **INTERROGATORY NO. 48:**

10 Do you contend that without cost containment procedures provided in Measure B, the
11 economic viability of the City would be placed at risk?

12 **INTERROGATORY NO. 49:**

13 If you contend that without cost containment procedures provided in Measure B, the
14 economic viability of the City would be placed at risk, please state all facts that support your
15 contention.

16 **INTERROGATORY NO. 50:**

17 If you contend that without cost containment procedures provided in Measure B, the
18 economic viability of the City would be placed at risk, please identify all witnesses with knowledge
19 of facts that support your contention.

20 **INTERROGATORY NO. 51:**

21 If you contend that without cost containment procedures provided in Measure B, the
22 economic viability of the City would be placed at risk, please identify all documents that support your
23 contention.

24 **INTERROGATORY NO. 52:**

25 Do you contend that without cost containment procedures provided in Measure B, the
26 economic viability of the City's employment benefit programs would be placed at risk?
27
28

1 **INTERROGATORY NO. 53:**

2 If you contend that without cost containment procedures provided in Measure B, the
3 economic viability of the City's employment benefit programs would be placed at risk, please state
4 all facts that support your contention.

5 **INTERROGATORY NO. 54:**

6 If you contend that without cost containment procedures provided in Measure B, the
7 economic viability of the City's employment benefit programs would be placed at risk, please
8 identify all witnesses with knowledge of facts that support your contention.

9 **INTERROGATORY NO. 55:**

10 If you contend that without cost containment procedures provided in Measure B, the
11 economic viability of the City's employment benefit programs would be placed at risk, please
12 identify all documents that support your contention.

13 **INTERROGATORY NO. 56:**

14 Do you contend that the City's Charter and Municipal Code permit modifications of employee
15 contribution rates to the City's retirement system to defray unfunded liabilities?

16 **INTERROGATORY NO. 57:**

17 If you contend that the City's Charter and Municipal Code permit modifications of employee
18 contribution rates to the City's retirement system to defray unfunded liabilities, please state all facts
19 that support your contention.

20 **INTERROGATORY NO. 58:**

21 If you contend that the City's Charter and Municipal Code permit modifications of employee
22 contribution rates to the City's retirement system to defray unfunded liabilities, please identify all
23 witnesses with knowledge of facts that support your contention.

24 **INTERROGATORY NO. 59:**

25 If you contend that the City's Charter and Municipal Code permit modifications of employee
26 contribution rates to the City's retirement system to defray unfunded liabilities, please identify all
27 documents that support your contention.

28

1 **INTERROGATORY NO. 60:**

2 Do you contend that the City employees' pro rata share of 50 percent of the City's obligation
3 for the retirement system's unfunded liabilities is approximately 16% of employees' gross pay?

4 **INTERROGATORY NO. 61:**

5 If you contend that the City employees' pro rata share of 50 percent of the City's obligation
6 for the retirement system's unfunded liabilities is approximately 16% of employees' gross pay, please
7 state all facts that support your contention.

8 **INTERROGATORY NO. 62:**

9 If you contend that the City employees' pro rata share of 50 percent of the City's obligation
10 for the retirement system's unfunded liabilities is approximately 16% of employees' gross pay, please
11 identify all witnesses with knowledge of facts that support your contention.

12 **INTERROGATORY NO. 63:**

13 If you contend that the City employees' pro rata share of 50 percent of the City's obligation
14 for the retirement system's unfunded liabilities is approximately 16% of employees' gross pay, please
15 identify all documents that support your contention.

16 **INTERROGATORY NO. 64:**

17 What was the cost to the City to hold a special election on June 5, 2012?

18 **INTERROGATORY NO. 65**

19 Since January 1, 1992, has the City actively recruited individuals to work for San Jose?

20 **INTERROGATORY NO. 66:**

21 If, since January 1, 1992, the City actively recruited individuals to work for San Jose, please
22 identify all witnesses with knowledge of facts involving that recruitment.

23 **INTERROGATORY NO. 67:**

24 Since January 1, 1992, has the City sent representatives to recruiting functions to recruit
25 employees to work for San Jose?

26

27

28

1 **INTERROGATORY NO. 68:**

2 If, since January 1, 1992, the City sent representatives to recruiting functions to recruit
3 employees to work for San Jose, please identify all witnesses with knowledge of facts involving that
4 recruitment.

5 **INTERROGATORY NO. 69:**

6 Since January 1, 1992, has the City actively recruited individuals living outside of California
7 to relocate to and work for San Jose?

8 **INTERROGATORY NO. 70:**

9 If, since January 1, 1992, the City actively recruited individuals living outside of California to
10 relocate to and work for San Jose, please identify all witnesses with knowledge of facts involving that
11 recruitment.

12 **INTERROGATORY NO. 71:**

13 Since January 1, 1992, has the City actively recruited individuals living outside the United
14 States to relocate to and work for San Jose?

15 **INTERROGATORY NO. 72:**

16 If, since January 1, 1992, the City actively recruited individuals living outside the United
17 States to relocate to and work for San Jose, please identify all witnesses with knowledge of facts
18 involving that recruitment.

19 **INTERROGATORY NO. 73:**

20 Since January 1, 1992, has the City referred to its retirement benefits in its recruitment of
21 potential San Jose employees?

22 **INTERROGATORY NO. 74:**

23 If, since January 1, 1992, the City referred to its retirement benefits in its recruitment of
24 potential San Jose employees, please identify all witnesses with knowledge of facts involving the
25 such references in recruitment.
26
27
28

1 **INTERROGATORY NO. 75:**

2 If, since January 1, 1992, the City referred to its retirement benefits in its recruitment of
3 potential San Jose employees, please identify all documents in which such reference was made (e.g.
4 recruiting literature, brochures, training materials for recruiters, "power point" presentations, etc.).

5 **INTERROGATORY NO. 76:**

6 Since January 1, 1992, has the City referred to its retirement benefits in communications with
7 City employees upon their retirement?

8 **INTERROGATORY NO. 77:**

9 If, since January 1, 1992, the City referred to its retirement benefits in communications with
10 City employees upon their retirement, please identify all witnesses with knowledge of facts involving
11 those references.

12 **INTERROGATORY NO. 78:**

13 If, since January 1, 1992, the City referred to its retirement benefits in communications with
14 City employees upon their retirement, please identify all documents in which such references were
15 made.

16 **INTERROGATORY NO. 79:**

17 Since January 1, 1992, has the City engaged the services of a third party service provider for
18 the System, including, but not limited to, legal services provider, accounting services provider,
19 consulting and advising services provider, recordkeeping services provider, trustee/custodial services
20 provider, or asset management services provider.

21 **INTERROGATORY NO. 80:**

22 If, since January 1, 1992, the City has engaged the services of a third party service provider
23 for the System, please state all facts relevant to the engagement of the third party service provider(s)
24 including, but not limited to, the service provided, name, known contact information, and service
25 provided.

26

27

28

1 **INTERROGATORY NO. 81:**

2 If, since January 1, 1992, the City has engaged the services of a third party service provider
3 for the System, please identify all witnesses with knowledge of the engagement of and services
4 provided by the third party service provider(s).

5 **INTERROGATORY NO. 82:**

6 If, since January 1, 1992, the City has engaged the services of a third party service provider
7 for the System, please identify all documents related to or referring to the engagement of and services
8 provided by the third party service provider(s).

9 **INTERROGATORY NO. 83:**

10 Since January 1, 1992, has the City engaged the services of a third party to perform analysis
11 of the System?

12 **INTERROGATORY NO. 84:**

13 If, since January 1, 1992, the City has engaged the services of a third party to perform
14 analyses of the System, please state all facts related to the third party analysis including, but not
15 limited to, the name of the third party, known contact information, and date of analysis.

16 **INTERROGATORY NO. 85:**

17 If, since January 1, 1992, the City has engaged the services of a third party to perform
18 analyses of the System, please identify all witnesses with knowledge of the facts involving the third
19 party's analysis of the System.


20 **INTERROGATORY NO. 86:**

21 If, since January 1, 1992, the City has engaged the services of a third party to perform
22 analyses of the System, please identify all documents related to or referring to the third party's
23 analysis of the System.

24 Dated: August 20, 2012

BEESON, TAYER & BODINE, APC

25 By:

26 
TEAGUE P. PATERSON
27 VISHTASP M. SOROUSHIAN
JOHN E. VARGA

28 Attorneys for AFSCME LOCAL 101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

SANTA CLARA COUNTY SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 483 Ninth Street, 2nd Floor, Oakland, CA 94607. On this day, I served the foregoing Document(s):

PLAINTIFF'S FIRST SET OF SPECIAL INTERROGATORIES

☒ By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

☐ By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☐ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

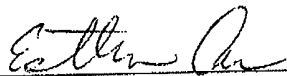
Debra Figone
City Manager, City of San José
City Manager's Office
200 East Santa Clara Street
San José CA 95113

City of San José
Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113

Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

Board of Administration for Federated
City Employees Retirement Plan
1737 N. First St, Suite 580
San Jose, CA 95112

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, August 20, 2012.



Esther Aviva

Received
AUG 21 2012
meyers|nave



\$ 002.700

02 1P

0003090073

AUG 20 2012

MAILED FROM ZIP CODE 94612



BEESON, TAYER & BODINE

ROSS HOUSE, SUITE 200

483 NINTH STREET

OAKLAND, CALIFORNIA 94607-4051



To:

K. Thomas / J. Foley

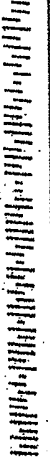
Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

ADDRESS SERVICE REQUESTED

meyers | nave

AUG 21 2012

RECEIVED



1 TEAGUE P. PATERSON, SBN 226659
JOHN E. VARGA, SBN 248895
2 VISHTASP M. SOROUSHIAN, SBN 278895
BEESON, TAYER & BODINE, APC
3 483 Ninth Street, 2nd Floor
Oakland, CA 94607
4 Telephone: (510) 625-9700
Facsimile: (510) 625-8275
5 Email: jvarga@beesontayer.com

6 Attorneys for Plaintiff
7 AFSCME LOCAL 101

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SANTA CLARA**
11 **AT SAN JOSE**

12 AFSCME LOCAL 101,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE,

16 Defendant.

Case No. 1-12-CV-227864

**DECLARATION OF JOHN E. VARGA
REGARDING NECESSITY OF
ADDITIONAL INTERROGATORIES**

17
18 I, JOHN E. VARGA, declare as follows:

19 1. I am an attorney at law duly license to practice before all the courts in the State of
20 California, and I am an associate in the law firm of Beeson, Tayer & Bodine, attorneys of record for
21 Plaintiff, AFSCME Local 101.

22 2. I am thoroughly familiar with the contents of this file and if called to testify as to the
23 facts contained in this declaration I could, and would, testify to those facts based upon my own
24 personal knowledge.

28 3. This declaration is submitted in support of the necessity of Plaintiff's additional
26 discovery requests.

27 4. I am propounding to Defendant, City of San Jose, the attached set of special
28 interrogatories.

1 5. I have not previously propounded interrogatories to this party. Concurrently with the
2 interrogatories, I am propounding upon Defendant a request for production of documents, requests
3 for admissions, and a set of form interrogatories.

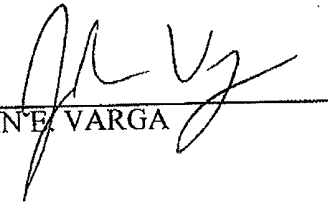
4 6. This set of specially prepared interrogatories contains a total of 86 specially prepared
5 interrogatories. This will cause the total number of specially prepared interrogatories served on
6 Defendant to exceed the number of specially prepared interrogatories permitted by California Code of
7 Civil Procedure section 2030.030 by 51 interrogatories.

8 7. I have personally examined each of the interrogatories in this set of specially prepared
9 interrogatories.

10 8. This number of interrogatories is warranted under CCP 2030.040 because of the
11 complexity and seriousness of the claims and issues raised in this lawsuit, as well as the number of
12 existing and potential factual issues in this complicated case involving seven causes of action alleging
13 violations of the California Constitution, common law principles of promissory estoppel and
14 equitable estoppel, and requests for declaratory and injunctive relief. The case involves a novel and
15 complex local ordinance and analysis and application of the state's vested rights doctrine. This
16 number of interrogatories provides Defendant with an expedient method to conduct an inquiry,
17 investigation, or search files or records to supply the information sought.

18 9. None of the questions in this set of interrogatories are being propounded for any
19 improper purpose, such as to harass the party, or the party's attorney, to whom it is directed, or to
20 cause any undue delay or needless increase in the cost of litigation.

21
22 I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th
23 day of August, 2012 at Oakland, California.

24
25
26
27
28

JOHN E. VARGA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

SANTA CLARA COUNTY SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 483 Ninth Street, 2nd Floor, Oakland, CA 94607. On this day, I served the foregoing Document(s):

**DECLARATION OF JOHN VARGA REGARDING
NECESSITY OF ADDITIONAL INTERROGATORIES**

☒ By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

☐ By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☐ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.


Debra Figone
City Manager, City of San José
City Manager's Office
200 East Santa Clara Street
San José CA 95113

City of San José
Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113

Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

Board of Administration for Federated
City Employees Retirement Plan
1737 N. First St, Suite 580
San Jose, CA 95112

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, August 20, 2012.



Esther Aviva

Received
AUG 21 2012
meyers|nave



BEESON, TAYER & BODINE
ROSS HOUSE, SUITE 200
483 NINTH STREET
OAKLAND, CALIFORNIA 94607-4051



To:

K. Thomas / J. Foley

Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

ADDRESS SERVICE REQUESTED

meyers|nave

AUG 21 2012

RECEIVED

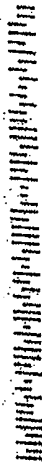


EXHIBIT F

1 TEAGUE P. PATERSON, SBN 226659
VISHTASP M. SOROUSHIAN, SBN 278895
2 JOHN E. VARGA, SBN 248895
BEESON, TAYER & BODINE, APC
3 483 Ninth Street, 2nd Floor
Oakland, CA 94607
4 Telephone: (510) 625-9700
Facsimile: (510) 625-8275
5 Email: tpaterson@beesontayer.com
vsoroushian@beesontayer.com
6 jvarga@beesontayer.com

7 Attorneys for Plaintiff
8 AFSCME LOCAL 101

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SANTA CLARA**
12 **AT SAN JOSE**

13 AFSCME LOCAL 101,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE,

17 Defendant.

Case No. 1-12-CV-227864

**PLAINTIFF'S FIRST SET OF REQUESTS
FOR THE PRODUCTION OF
DOCUMENTS TO CITY OF SAN JOSE**

18
19 **PROPOUNDING PARTY:** Plaintiff, AFSCME LOCAL 101

20 **RESPONDING PARTY:** Defendant, CITY OF SAN JOSE

21 **SET NO.:** ONE (1)

22 **DEFINITIONS**

- 23 1. The term "you," or "your" shall mean or refer to CITY OF SAN JOSE and/or its
24 agents, employees and anyone else acting on its behalf, inclusively.
- 25 2. "Defendant" means CITY OF SAN JOSE.
- 26 3. "Plaintiff" means AFSCME, LOCAL 101, and its affiliates MEF and CEO.
- 27 4. "Any," "each," and "all" shall be read to be all-inclusive, and to require the production
28 of each and every document responsive to the request in which such term appears, without limitation.

1 5. “Miscellaneous employees,” “employees,” or “members” means miscellaneous
2 employees employed by the City of San Jose and who are members of the City’s Federated City
3 Employees Retirement Plan.

4 6. “Retirement System,” “Federated System,” or “System” means the Federated City
5 Employees Retirement System providing for certain benefits for covered employees and the terms
6 and conditions of the plan benefits prescribed, and adopted thereunder, with respect to members of
7 AFSCME 101.

8 7. “Measure B” means the act entitled, “The Sustainable Retirement Benefits and
9 Compensation Act,” placed on the ballot as “Measure B” for the June 5, 2012, special election.

10 8. “Retirement benefits” means and post-employment benefits, deferred compensation,
11 health and welfare, and pension, or any other form of benefit, provided by the City to employees who
12 are members of AFSCME 101 and its affiliates.

13 9. “Person” or “persons” means any natural person, proprietorship, firm, corporation,
14 trustee, unincorporated associations, organization, partnership, joint venture, trust estate, public
15 agency, department, bureau, board, team, group of natural persons, or any other entity.

16 10. The term “document” means any physical thing containing information and any
17 written, record, or graphic matter of any kind or description, however produced or reproduced,
18 whether draft or final, original or reproduction, hand-written or typed, including, without limitation,
19 any papers, letters, internal or external correspondence, memoranda, records, notes (whether formal,
20 informal, personal, hand-written or typed), films, transcripts, contracts, agreement, licenses,
21 microfilm, telegrams, books, magazines, advertisements, periodicals, bulletins, circulars, pamphlets,
22 statements, notices, reports, manuals, handbooks, rules, regulations, directives, teletype messages,
23 facsimile transmissions, minutes of meetings, resolutions, by-laws, articles of incorporation,
24 interoffice communications, financial statements, ledgers, books of account, proposals, prospectuses,
25 offers, orders, receipts, working papers, desk or appointment calendars, date books, diary or calendar
26 entries, tabulations, calculations, legal pleadings, payment records, handwritten notes, warrants,
27 affidavits, bulletins, cards, tickets, invoices, instruments, notes, vouchers, inventory lists, legal
28 descriptions, canceled checks, check stubs, maps, blueprints, drawings, computer input or output

1 materials, computer storage devices, writings, graphs, charts, scrolls, notebooks, journals, registers,
2 diplomas, recordings of any kind (whether or not transcribed), applications, notes or summaries of
3 any conversations, telephone calls, meetings, or other communications, other compilations from
4 which information can be obtained or translated through detection devices into reasonably usable
5 form, movies, tapes for visual or audio reproduction, recordings, tape recordings and other sound and
6 video records, transcripts of such recordings, photographs, phonograph records, data processing
7 results, printouts and computations (both in existence and stored in memory components), computer
8 programs, any information stored in any computers, and materials similar to any of the foregoing.
9 "Document" and "documents" also include without limitation, all copies of a document or which
10 contain any additional writings, interlineations, underlinings, notes, deletions, or any other markings
11 or notations, or that are otherwise not identical copies of the original.

12 11. Without limiting the forgoing, the term "document" also means all electronic data
13 including computer software programs, applications, and files, including, but not limited to, word
14 processing programs and files, spreadsheet programs and files, accounting programs and files, payroll
15 programs and files, and e-mail programs and files, regardless of whether the data is stored on a
16 computer hard drive, external hard drive, network drive, flash drive, remote storage, disk, CD, DVD,
17 tape or any other means of digital or electronic storage or transmittal. File or files means "active"
18 files that are readily readable by one or more computer application, "deleted" but recoverable files,
19 and electronic file fragments that contain files that have been partially deleted and overwritten with
20 new data. Hard drives include primary storage units on computers, personal data assistants, and other
21 electronic devices that contain data storage capabilities.

22 INSTRUCTIONS

23 1. The documents called for are those in your possession, custody or control, wherever
24 the documents may be located, including those in the custody, possession, or control of your
25 representatives, attorneys, consultants, actuaries, accountants, or any other agent of any kind. You
26 shall produce all documents that are known to you or that can be located or discovered by you or
27 any of your agents of any kind. The request seeks documents in your possession, custody, or control
28

1 whether or not such possession, custody, or control is personal or is by virtue of your control over, or
2 ownership or interest in, defendant or any other entity.

3 2. If more than one version of any document exists and any version bears any notation or
4 other variation that does not appear on all other versions of that document, then each such annotated
5 or variant version shall be considered a separate document from the non-annotated or non-variant
6 version, and shall be produced.

7 3. All requests made herein shall be construed to include any supplemental documents
8 responsive to these requests that are later prepared, created or discovered.

9 4. Each document produced shall be identified by the request for production of
10 documents to which it is responsive.

11 5. If your response to any of the document requests is qualified in any way, please set
12 forth the details of such qualification.

13 6. If any of the following requests cannot be responded to in full after exercising due
14 diligence to secure the information, please state and respond to the extent possible, specifying your
15 inability to respond to the remainder, and stating whatever information you have concerning the
16 unanswered portion(s).

17 7. If you object to part of a request and refuse to respond to that part, please produce all
18 documents called for which are not subject to that objection. Similarly, wherever a document is not
19 produced in full, please state with particularity the reason or reasons it is not being produced in full,
20 and describe, to the best of your knowledge, information and belief, and with as much particularity
21 as possible, those portions of the document which are not produced. If you object to a request's
22 scope or time period, you should respond for the period or scope you believe is appropriate.

23 8. For each document to which any privilege is claimed, you shall identify the date of the
24 document, any title or heading affixed to the document, the name, address and job or title of all
25 persons to whom and by whom the document was sent or distributed, the type of document (e.g.
26 letter, memorandum), the general subject matter of the document, and the nature and grounds of the
27 alleged privilege.
28

1 9. The words "and" and "or" are interchangeable such that the use of one shall include
2 the other. The use of plural shall include the singular and vice versa. The use of the masculine shall
3 include the feminine and vice versa.

4 10. "Relevant time period" means January 1, 1992 to the present.

5 **DOCUMENTS REQUESTED**

6 **REQUEST FOR PRODUCTION NO. 1:**

7 All documents identified in your responses to the Plaintiff's First Set of Special
8 Interrogatories served concurrently herewith.

9 **REQUEST FOR PRODUCTION NO. 2:**

10 All documents identified in your responses to Plaintiff's First Set of Form Interrogatories
11 served concurrently herewith.

12 **REQUEST FOR PRODUCTION NO. 3:**

13 All documents issued by the City of San Jose, during the relevant time period, which describe
14 the pension retirement benefits provided by the City of San Jose to retirees of the City. This includes,
15 but is not limited to, handbooks, policies, regulations, procedures, administrative guidelines,
16 resolutions, and collective bargaining agreements in effect during the relative time period.

17 **REQUEST FOR PRODUCTION NO. 4:**

18 All documents that reflect communications, during the relevant time period, between the City
19 of San Jose and current employees of the City that refer to retirement benefits provided by the City.

20 **REQUEST FOR PRODUCTION NO. 5:**

21 All documents that reflect communications, during the relevant time period, between the City
22 of San Jose and potential employees of the City of San Jose that refer to retirement benefits provided
23 by the City.

24 **REQUEST FOR PRODUCTION NO. 6:**

25 All documents referring to, reflecting, discussing or consisting of, any official or legislative
26 act by the City or its subdivisions relating to retirement benefits.

1 **REQUEST FOR PRODUCTION NO. 7:**

2 All documents that reflect communications, during the relevant time period, between the City
3 of San Jose and former employees of the City of San Jose that refer to retirement benefits provided
4 by the City.

5 **REQUEST FOR PRODUCTION NO. 8:**

6 All collective bargaining proposals made by the City of San Jose to union representatives for
7 each bargaining unit during the relevant time period regarding pension benefits.

8 **REQUEST FOR PRODUCTION NO. 9:**

9 All notes memorializing negotiations between the City of San Jose and union representatives
10 for each bargaining unit during the relevant time period regarding pension benefits.

11 **REQUEST FOR PRODUCTION NO. 10:**

12 All notes memorializing negotiations between the City of San Jose and union representatives
13 for each bargaining unit during the relevant time period regarding pension benefits.

14 **REQUEST FOR PRODUCTION NO. 11:**

15 All reports, analyses, recommendations and other documents, including actuarial reports or
16 cost analyses, which you considered, or upon which you relied for any decisions, recommendations
17 or advice, or any other action in connection with the decision to place Measure B on the ballot.

18 **REQUEST FOR PRODUCTION NO. 12:**

19 All reports, analyses, recommendations and other documents, including actuarial reports or
20 cost analyses, which you considered, or upon which you relied for any decisions, recommendations
21 or advice, or any other action in connection with negotiations with representatives of each bargaining
22 unit regarding pension benefits.

23 **REQUEST FOR PRODUCTION NO. 13:**

24 Any and all documents referring or relating to any proposes changes or amendments, or the
25 consideration of any changes, to the Federated System or retirement benefits, including but not
26 limited to Measure B.

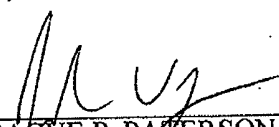
1 **REQUEST FOR PRODUCTION NO. 14:**

2 Any and all documents submitted to state or federal agencies referring or relating to the
3 Federated System.

4
5 Dated: August 20, 2012

BEESON, TAYER & BODINE, APC

6
7 By:


TEAGUE P. PATERSON
VISHTASP M. SOROUSHIAN
JOHN E. VARGA
Attorneys for AFSCME LOCAL 101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

SANTA CLARA COUNTY SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 483 Ninth Street, 2nd Floor, Oakland, CA 94607. On this day, I served the foregoing Document(s):

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

☒ By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

☐ By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☐ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.


Debra Figone
City Manager, City of San José
City Manager's Office
200 East Santa Clara Street
San José CA 95113

City of San José
Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113

Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

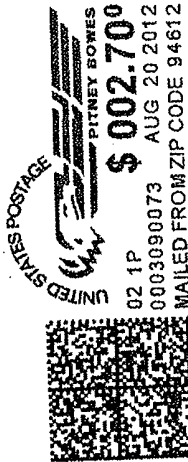
Board of Administration for Federated
City Employees Retirement Plan
1737 N. First St, Suite 580
San Jose, CA 95112

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, August 20, 2012.



Esther Aviva

Received
AUG 21 2012
meyers|nave



BEESON, TAYER & BODINE
ROSS HOUSE, SUITE 200
483 NINTH STREET
OAKLAND, CALIFORNIA 94607-4051



To:

K. Thomas / J. Foley

Arthur A. Haringer, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

ADDRESS SERVICE REQUESTED

meyers | nave

AUG 21 2012

RECEIVED

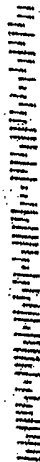


EXHIBIT G

1 Art Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
jnock@meyersnave.com
4 Michael C. Hughes (SBN: 215694)
mhughes@meyersnave.com
5 MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
6 Oakland, California 94607
Telephone: (510) 808-2000
7 Facsimile: (510) 444-1108

8 Attorneys for Plaintiff
City of San Jose

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

12 CITY OF SAN JOSE,

13 Plaintiff,

14 v.

15 SAN JOSE POLICE OFFICERS'
ASSOCIATION; SAN JOSE FIREFIGHTERS,
16 I.A.F.F. LOCAL 230; MUNICIPAL
EMPLOYEES' FEDERATION, AFSCME,
17 LOCAL NO. 101; CITY ASSOCIATION OF
MANAGEMENT PERSONNEL, IFPTE,
18 LOCAL 21; THE INTERNATIONAL UNION
OF OPERATING ENGINEERS, LOCAL NO.
19 3; and DOES 1-10.

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 5:12-CV-02904-LHK

**PLAINTIFF'S OPPOSITION TO
MOTIONS TO DISMISS**

Hearing Date: October 4, 2012
Time: 9:00 am
Courtroom: 8
Judge: Honorable Lucy Koh

Complaint Filed: June 5, 2012
Trial Date: None Set

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
II.	STATEMENT OF FACTS.....	4
A.	BACKGROUND TO MEASURE B.....	4
B.	SUMMARY OF MEASURE B.	5
C.	CITY COUNCIL ANTICIPATED LITIGATION.	5
D.	THE CITY'S <i>FEDERAL</i> ACTION FOR DECLARATORY RELIEF (<i>FIRST-FILED</i> OF ALL SIX ACTIONS)	5
1.	The Federal Action's Claims And Parties.....	5
2.	The Unions' Five State-Court Actions.....	6
(a)	The Police Officers' Association's Action (" <i>POA</i> Action").....	6
(b)	The <i>Sapien</i> Action (Firefighters' Local 230).	7
(c)	The <i>Harris</i> Action (Operating Engineers Local 3).	7
(d)	The <i>Mukhar</i> Action (IFPTE Local 21).....	8
(e)	<i>AFSCME</i> Action.....	9
III.	ARGUMENT	9
A.	THE CITY'S DECLARATORY JUDGMENT ACTION MEETINGS ALL OF JUSTICIABILITY.	9
1.	DECLARATORY JUDGMENT STANDARDS.....	9
(a)	Federal Subject Matter Jurisdiction.....	10
(b)	Actual Controversy.	10
2.	THE CITY'S LAWSUIT SATISFIES CONSTITUTIONAL RIPENESS REQUIREMENTS.....	11
(a)	The Filing Date Does Not Deprive This Lawsuit of Ripeness.....	11
(b)	This Is Not a Case Where Further Action Must Be Taken Before the Law May Be Implemented.	13
(c)	The City Does Not Seek an "Advisory Opinion."	15

1	(d)	The POA's Argument On Standing Is Legally Incorrect; In A Declaratory Relief Action, The Plaintiff Need Only Show An Actual Case And Controversy.....	17
2			
3	B.	DEFENDANTS HAVE NOT DEMONSTRATED ANY BASIS FOR THIS COURT TO ABSTAIN FROM DECIDING THIS CASE.....	18
4			
5	1.	<i>YOUNGER</i> ABSTENTION DOES NOT APPLY BECAUSE THE CITY'S FEDERAL ACTION WILL NOT ENJOIN THE STATE-COURT ACTIONS OR HAVE THE EFFECT OF DOING SO.....	18
6			
7	(a)	<i>Younger</i> Abstention Does Not Apply Unless The Federal Action Will Enjoin The State-Court Action Or Have The Effect Of Doing So.....	19
8			
9	(b)	The City's Federal Action Will Not Enjoin the State-Court Actions or Have the Effect of Doing So.	20
10	2.	<i>PULLMAN</i> ABSTENTION DOES NOT APPLY TO THIS CASE, AND – EVEN IF IT DID – CERTIFICATION OF STATE-LAW QUESTIONS IS FAVORED OVER ABSTENTION.	21
11			
12	(a)	<i>Pullman</i> Abstention Does Not Apply.....	22
13			
14	(i)	Summary of <i>Pullman</i> Abstention.	22
15			
16	(ii)	The Case Does Not Satisfy the Second <i>Pullman</i> Factor: A Definitive Ruling by a California Court Would Not Obviate the Need for Federal Constitutional Adjudication by This Court.	23
17			
18	(iii)	This Case Fails to Satisfy the Third <i>Pullman</i> Factor: State Law Is Not “Uncertain” or “Novel” for <i>Pullman</i> Purposes.	25
19			
20	(b)	Even If <i>Pullman</i> Applies, Certification To The California Supreme Court Is Favored Over <i>Pullman</i> Abstention.	27
21	3.	THE COURT SHOULD RETAIN JURISDICTION OF THIS CASE BECAUSE THE <i>BRILLHART</i> PRINCIPLES WOULD BE FURTHERED BY FEDERAL ADJUDICATION.	28
22			
23	(a)	Summary of <i>Brillhart</i> Abstention.	29
24			
25	(b)	The <i>Brillhart</i> Factors Weigh in Favor of this Court Retaining Jurisdiction.	29
26			
27	(i)	Federal-Law Claims Are At Issue in the City's Action.	29
28			
	(ii)	The Unions Are the Forum Shoppers Here – Not the City.....	31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(iii)	A Stay under <i>Brillhart</i> Will Encourage Duplicative State-Court Litigation.....	33
(iv)	The Ninth Circuit's Additional <i>Brillhart</i> Factors Militate in Favor of Retaining Jurisdiction.	35

IV.	CONCLUSION	35
-----	------------------	----

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

<i>Aetna Life Ins. Co. v. Haworth</i> , 300 U.S. 227 (1937)	16
<i>Alabama State Federation of Labor v. McAdory</i> , 325 U.S. 450 (1945)	16
<i>Alameda Conservation Assoc. v. California</i> , 437 F.2d 1087 (9th Cir. 1971)	16
<i>Albertson v. Millard</i> , 345 U.S. 242 (1953)	26
<i>AmerisourceBergen Corp. v. Roden</i> , 495 F.3d 1143 (9th Cir. 2007)	3, 19, 20, 21
<i>Arizonans for Official English v. Arizona</i> , 520 U.S. 43 (1997)	12, 27, 28
<i>Associated Indent. Corp. v. Fairchild Indus., Inc.</i> , 961 F.2d 32 (2d Cir.1992)	11
<i>Babbitt v. United Farm Workers Nat. Union</i> 442 U.S. 51 (1979)	26
<i>Brillhart v. Excess Ins. Co. of America</i> , 316 U.S. 491 (1942)	passim
<i>Calderon v. Ashmus</i> , 523 U.S. 740 (1998)	10
<i>Columbia Basin Apartment Ass'n v. City of Pasco</i> , 268 F.3d 791 (9th Cir. 2001)	22, 23
<i>Continental Casualty Co. v. Robsac Industries</i> , 947 F.2d 1367 (9th Cir. 1991)	34
<i>Dixie Electric Cooperative v. Citizens of Alabama</i> , 789 F.2d 852 (11th Cir. 1986)	16
<i>E.R. Squibb & Sons, Inc. v. Lloyd's & Cos.</i> , 241 F.3d 154 (2d. Cir. 2001)	11
<i>Employers Ins. of Wausau v. Fox Entertainment Group, Inc.</i> , 522 F.3d 271 (2d Cir. 2008)	11

1	<i>Fireman's Fund Ins. Co. v. City of Lodi,</i>	
2	2002 U.S. App. LEXIS 20999 (Aug. 6, 2002)	3, 22, 23, 25
3	<i>General Motors v. Romein,</i>	
4	503 U.S. 181 (1992)	25
5	<i>Gilbertson v. Albright,</i>	
6	381 F.3d 965 (9th Cir. 2004)	19, 20
7	<i>Government Employees Ins. Co. ("GEICO") v. Dizol,</i>	
8	113 F.3d 1220 (9th Cir. 1998)	29, 34, 35
9	<i>Hanford Executive Management Employee Association v. City of Hanford,</i>	
10	2012 U.S. Dist. LEXIS 23161 (E.D. Cal. Feb. 23, 2012)	2, 27, 32
11	<i>Harman v. Forssensuis,</i>	
12	380 U.S. 528 (1964)	26
13	<i>Hawaii Housing Authority v. Midkiff,</i>	
14	467 U.S. 229 (1984)	3, 23, 24
15	<i>Hillblom v. U.S.</i>	
16	896 F.2d 426 (9th Cir. 1990)	16
17	<i>Household Bank v. JFS Group,</i>	
18	320 F.3d 1249 (11th Cir. 2003)	10
19	<i>Irving Trust v. Day,</i>	
20	314 U.S. 556 (1942)	25
21	<i>Lujan v. Defenders of Wildlife,</i>	
22	504 U.S. 555 (1992)	12, 15
23	<i>Maryland Casualty Co. v. Pacific Coal & Oil Co.,</i>	
24	312 U.S. 270 (1941)	10, 17
25	<i>MedImmune, Inc. v. Genentech, Inc.,</i>	
26	549 U.S. 118 (2007)	10
27	<i>Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.,</i>	
28	460 U.S. 1 (1983)	30, 31
	<i>New Orleans Public Service, Inc. v. Council of the City of New Orleans,</i>	
	491 U.S. 350 (1989)	21
	<i>Newman-Green, Inc. v. Alfonzo-Larrain,</i>	
	490 U.S. 826 (1989)	12
	<i>Plumleigh v. City of Santa Ana,</i>	
	2010 U.S. Dist. LEXIS 131343 (C.D. Cal., Dec. 8, 2010)	24

1	<i>Porter v. Jones,</i>	
2	319 F.3d 483 (9th Cir. 2003).....	22, 23
3	<i>Potrero Hills Landfill, Inc v. County of Solano,</i>	
4	657 F.3d 876 (9th Cir. 2011).....	20, 21
5	<i>Principal Life Ins. Co. v. Robinson,</i>	
6	394 F.3d 665 (9th Cir. 2005).....	35
7	<i>Pue v. Sillas,</i>	
8	632 F.2d 74 (9th Cir. 1980).....	3, 24
9	<i>Quong Ham Wah Co. v. Industrial Acc. Commission of California,</i>	
10	255 U.S. 445 (1921)	26
11	<i>Renne v. Geary,</i>	
12	501 U.S. 312 (1991)	12
13	<i>Retired Employees Association of Orange County, Inc. v. County of Orange,</i>	
14	No. SACV-07-1301 AG (C.D. Cal. August 13, 2012).....	1
15	<i>Retired Emps. Ass'n of Orange County v. County of Orange,</i>	
16	610 F.3d 1099 (9th Cir. 2010).....	24, 28
17	<i>Robertson v. Kulongoski,</i>	
18	466 F.3d 1114 (9th Cir. 2006).....	2
19	<i>Sacramento County Retired Employees Association v. County of Sacramento,</i>	
20	2012 U.S. Dist. LEXIS 45669 (E.D. Cal. March 31, 2012).....	2
21	<i>San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System,</i>	
22	568 F.3d 725 (9th Cir. 2009).....	2, 25, 26
23	<i>San Jose Silicon Valley Chamber of Commerce Political Action Committee v.</i>	
24	<i>City of San Jose,</i>	
25	546 F.3d 1087 (9th Cir. 2008).....	19
26	<i>Schreiber Distribution Co. v. Serv-Well Furniture Co.,</i>	
27	806 F.2d 1393 (9th Cir. 1986).....	15
28	<i>Sherwin-Williams Co. v. Holmes,</i>	
	343 F.3d 383 (5th Cir. 2003).....	33, 35
	<i>Shyh-Yih Hao v. Wu-Fu Chen,</i>	
	2011 U.S. Dist LEXIS 33149 (N.D. Cal. March 16, 2011)	3, 18, 19, 20
	<i>Sierra Club v. Dombeck,</i>	
	161 F.Supp.2d 1052 (D. Ariz. 2001).....	13, 15

1	<i>Smelt v. County of Orange,</i>	
2	447 F.3d 673 (9th Cir. 2006).....	23
3	<i>Societe de Conditionnement v. Hunter Eng. Co., Inc.,</i>	
4	655 F.2d 938 (9th Cir. 1981).....	9, 18
5	<i>Sonoma County Ass'n of Retired Employees v. Sonoma County,</i>	
6	2010 U.S.Dist. LEXIS 143345 (N.D. Cal. Nov. 23, 2010).....	2
7	<i>Standard Insurance Company v. Saklad,</i>	
8	127 F.3d 1179 (9th Cir. 1997).....	10, 17
9	<i>Stephens v. Tielsh,</i>	
10	502 F.2d 1360 (9th Cir. 1974).....	24
11	<i>Stormans, Inc. v. Selecky,</i>	
12	586 F.3d 1109 (9th Cir. 2009).....	13, 14
13	<i>Texas v. United States,</i>	
14	523 U.S. 296 (1998).....	15
15	<i>Travelers Ins. Co. v. Louisiana Farm Bureau Fed'n,</i>	
16	996 F.2d 774 (5th Cir. 1993).....	33
17	<i>United Public Workers of America v. Mitchell,</i>	
18	330 U.S. 75 (1947).....	16
19	<i>United States Trust v. New Jersey,</i>	
20	431 U.S. 1. (1977).....	26
21	<i>Verizon v. Inverizon,</i>	
22	295 F.3d 870 (8th Cir. 2002).....	30, 31
23	<i>Villas at Parkside Partners v. City of Farmers Branch,</i>	
24	577 F.Supp. 2d 880 (N.D. Tex. 2008).....	16
25	<i>Waiialua Agr. Co. v. Maneja,</i>	
26	178 F.2d 603 (9th Cir. 1949).....	17
27	<i>Wilton v. Seven Falls Co.,</i>	
28	515 U.S. 277 (1995).....	3, 29, 30
	<i>Wis. v. Constantineau,</i>	
	400 U.S. 433 (1971).....	3, 25
	<i>Zwickler v. Koota,</i>	
	389 U.S. 241 (1967).....	22

1	STATE CASES	
2	<i>Los Angeles Alliance for Survival v. City of Los Angeles,</i>	
3	22 Cal. 4th 352 (2000).....	27
4	<i>REAOC v. County of Orange,</i>	
5	52 Cal.4th 1171 (2011).....	26
6	<i>San Remo Hotel L.P. v. City and County of San Francisco,</i>	
7	27 Cal. 4th 643 (2002).....	24
8	<i>Valdez v. Cory,</i>	
9	139 Cal.App.3d 773 (1983).....	26
10	FEDERAL STATUTES	
11	28 U.S.C. § 2201	29
12	RULES	
13	Cal. Rules of Court, 8.548.....	27
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

I.
INTRODUCTION AND SUMMARY OF ARGUMENT

This is the first of six pending lawsuits seeking declaratory and other relief concerning the legality of San Jose's Measure B – "The Sustainable Retirement Benefits and Compensation Act" – enacted by San Jose's voters on June 5, 2012. This case presents federal and state constitutional issues of vital importance to the City, its residents, employees, and retirees.

In the midst of the public debate whether to place Measure B on the ballot, and during the course of related labor negotiations, the City's labor unions and City retirees claimed that the measure would violate federal and state laws protecting vested contract rights to retirement benefits. There was certainty that labor unions and retirees would sue the City and attempt to enjoin the City from implementing many of the reforms called for in Measure B. In placing the measure on the ballot, the City advised the electorate that, in light of this present, live, and explicit controversy, the City would seek declaratory relief before implementing most provisions of Measure B.

The stakes are high in the present economic climate. Measure B is expressly intended to restore and preserve essential City services that have been reduced or outright eliminated in San Jose. Sustainable funding for such services as police and fire protection, street maintenance, libraries, and community centers is at issue.

This Case Is Justiciable. For the unions now to assert that there is no "Article III justiciable controversy" and to seek dismissal is plainly wrong. Again, the unions themselves are independently pursuing declaratory relief and injunctive relief against the City in state court. It is senseless for the unions to argue now that there is no live controversy appropriate for declaratory relief, or that the case is somehow "unripe." The federal and state constitutional issues are fully joined in this case, and the Court should proceed to resolve them.

The Federal Forum Is Appropriate. Furthermore, not only is this case ripe for decision, federal court is an appropriate forum, as demonstrated by the many federal court actions brought by unions, retirees, and employees, under *both* federal and state law, for violation of their vested rights to post-retirement benefits. These federal court actions include: *Retired Employees*

1 *Association of Orange County, Inc. v. County of Orange*, No. SACV-07-1301 AG (C.D. Cal.
 2 August 13, 2012) (granting summary judgment to county where retirees sued under federal and
 3 state contracts clauses for change in method of determining premiums for retiree health benefits);
 4 *Sacramento County Retired Employees Association v. County of Sacramento*, 2012 U.S. Dist.
 5 LEXIS 45669 (E.D. Cal. March 31, 2012) (retiree association brought claims that county had
 6 violated both the federal and state contracts clauses when it reduced or eliminated retiree health
 7 insurance premium subsidies); *Sonoma County Ass'n of Retired Employees v. Sonoma County*,
 8 2010 U.S. Dist. LEXIS 143345 (N.D. Cal. Nov. 23, 2010) (granting summary judgment to Sonoma
 9 County on, inter alia, retirees' federal contracts clause and federal due process claims challenging
 10 increase in health-care premiums); *San Diego Police Officers' Ass'n v. San Diego City Employees'*
 11 *Retirement System*, 568 F.3d 725, 737 (9th Cir. 2009) (rejecting police union's claims that the
 12 City's imposition of last, best and final offer after the breakdown of labor negotiations violated
 13 vested contractual rights in violation of the federal contracts clause); *Robertson v. Kulongoski*, 466
 14 F.3d 1114 (9th Cir. 2006) (rejecting current and retired public employees' federal contracts clause
 15 challenge of amendment of Oregon Public Employees Retirement System).

16 In fact, a law firm *involved in this federal case* filed a lawsuit on behalf of a client union *in*
 17 *federal court* that raises both federal and state contracts claims. In *Hanford Executive*
 18 *Management Employee Association v. City of Hanford*, 2012 U.S. Dist. LEXIS 23161 (E.D. Cal.
 19 Feb. 23, 2012), the union – represented by the law firm of Carroll Burdick & McDonough, which
 20 represents the POA in this case – alleged, among other claims, that the City had violated its
 21 members' rights under both the federal and California contracts clauses by requiring increased
 22 employee retirement contributions and lowering retirement benefits. Applying the standards from
 23 both federal and state case law, the federal district court held that the union had not stated facts
 24 supporting a violation of vested contractual rights, but granted leave to amend. *Id.* at *19-36.

25 **The Unions' Abstention Theories Do Not Apply.** As part of their effort to prevent this
 26 Court from resolving the constitutional issues in this case, the unions offer three Supreme Court
 27 abstention doctrines: *Younger v. Harris* ("Younger"); *Railroad Comm'n of Texas v. Pullman Co.*
 28 ("Pullman"); and *Brillhart v. Excess Ins. Co. of America* ("Brillhart"). The requirements for

1 *Younger* and *Pullman* are not present, prohibiting this Court from abstaining based on those
 2 doctrines. Similarly, although this Court has discretion under *Brillhart*, the *Brillhart* factors favor
 3 the Court's retention of this case.

4 *Younger* abstention does not apply because, as this Court has held in other cases, this
 5 action will not "enjoin the [state court] proceeding or have the practical effect of doing so." *Shyh-*
 6 *Yih Hao v. Wu-Fu Chen*, 2011 U.S. Dist LEXIS 33149 (N.D. Cal. March 16, 2011), relying on
 7 *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1148 (9th Cir. 2007). Here, the City is not
 8 seeking to enjoin a state court action or challenging the process by which the state court is
 9 adjudicating Measure B.

10 *Pullman* abstention does not apply because there is no issue of state law that if decided by
 11 a state court would obviate the necessity for adjudication of the federal claims. *Pullman*
 12 abstention is not required for interpretation of parallel state constitutional provisions, such as the
 13 unions' claims based on the California Constitution's contracts clause, takings clause, and due
 14 process protections. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 237 n.4 (1984); *Pue v.*
 15 *Sillas*, 632 F.2d 74, 80 (9th Cir. 1980). And the claims based on state laws are not uncertain for
 16 *Pullman* abstention purposes. To the extent that interpretation or construction of a new state law
 17 is based on developed and clear standards, such as is the case here, then *Pullman* does not apply.
 18 *Fireman's Fund Ins. Co. v. City of Lodi*, 2002 U.S. App. LEXIS 20999, *21 (Aug. 6, 2002), citing
 19 *Wis. v. Constantineau*, 400 U.S. 433, 439 (1971).

20 The only doctrine that merits serious consideration by the Court is *Brillhart* abstention,
 21 which confers discretion on courts to abstain from "gratuitous interference with the orderly and
 22 comprehensive disposition of state court litigation...." *Brillhart v. Excess Ins. Co. of America*,
 23 316 U.S. 491, 495 (1942). But cases like this one, involving federal questions, are at the "outer
 24 boundaries" of the *Brillhart* doctrine. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 290 (1995). And
 25 contrary to defendants' contentions, this was not a reactive case by the City. As demonstrated
 26 above, many plaintiffs decided, independently, to bring their vested rights cases in federal court,
 27 raising both federal and state claims. It is the defendants here who are forum shopping, not the
 28 City, because they have deliberately failed to assert their federal claims.

1 Should this Court proceed to manage and adjudicate the City's declaratory relief
 2 complaint, it would not constitute a "gratuitous interference" with orderly state court litigation.
 3 Legitimate and important federal issues are present in this case that must be resolved, as well as
 4 state court issues. The federal forum is well suited to manage the issues and parties to ensure a
 5 fair and efficient trial court disposition; cross motions for summary judgment can easily be
 6 scheduled under court supervision.

7 In contrast, the unions in state court have proceeded in an uncoordinated fashion that can
 8 hardly be considered "orderly" – at least at this juncture. To date, they have refused to consolidate
 9 the cases, and are instead proceeding in piecemeal fashion, serving separate discovery, and acting
 10 independently in separate lawsuits.

11 Ultimately, the strongest factors in favor of the federal court assuming jurisdiction and
 12 resolving the City's declaratory relief action are that: (1) there are unquestionably federal claims
 13 at issue in this case; and (2) the federal forum is thus the only forum where all pleaded issues –
 14 both state *and* federal issues – can be resolved, efficiently and fairly, at one time. The unions
 15 cannot overcome this fundamental point. On this ground alone, the Court should deny the motions
 16 to stay or dismiss based on *Brillhart* abstention principles.

17 The City respectfully urges the Court to retain jurisdiction and resolve this current
 18 controversy as soon as reasonably possible.

19 II. 20 STATEMENT OF FACTS

21 A. BACKGROUND TO MEASURE B.

22 As alleged in the City's First Amended Complaint in this action ("City's Federal FAC"),
 23 the City of San Jose ("the City") is committed to providing essential City services. (City's Federal
 24 FAC, ¶2.) The City's ability to provide these essential services has been and continues to be
 25 threatened by dramatic budget cuts caused in large part by the climbing and unsustainable cost of
 26 employee benefit programs. (City's Federal FAC, ¶3.) This has only been exacerbated by the
 27 current economic crisis. (City's Federal FAC, ¶3.) In this context, the City Council voted in
 28 March 2012 to place the "Sustainable Retirement Benefits and Compensation Act," also known as

1 “Measure B,” on the ballot for the June 5, 2012 election. (City’s Federal FAC, ¶¶27, 28.)

2 **B. SUMMARY OF MEASURE B.**

3 Measure B is a ballot initiative intended to adjust post-employment benefits in a manner
4 that protects the City’s viability and public safety while simultaneously allowing for fair post-
5 employment benefits for City workers. (City’s Federal FAC, ¶5.) As presented to the voters,
6 Measure B amends and modifies retirement plan features by increasing employees’ contributions
7 toward unfunded liabilities, establishing a voluntary reduced pension plan for current employees,
8 establishing pension cost and benefit limitations for new employees, modifying disability
9 retirement procedures, authorizing temporary suspensions of COLAs during emergencies, and
10 requiring voter approval for increases in future pension benefits. (City’s Federal FAC, ¶27.)

11 **C. CITY COUNCIL ANTICIPATED LITIGATION.**

12 When the City Council voted to place Measure B on the ballot, it anticipated that Measure
13 B would face legal challenge. (City’s Federal FAC, ¶9.) In fact, prior to Measure B’s placement
14 on the ballot, the City’s unions and others had contended that Measure B violated both federal and
15 state law. (See, e.g., Hartinger Decl., ¶¶13, 14, Exs. D, E.) As a result of the anticipated
16 challenge, the Council specifically directed the City to file a declaratory relief action to determine
17 the legality of the measure. (Id. at ¶¶4-7, Exs. A-C.)

18 **D. THE CITY’S *FEDERAL* ACTION FOR DECLARATORY RELIEF (*FIRST-FILED***
19 **OF ALL SIX ACTIONS)**

20 **1. The Federal Action’s Claims And Parties.**

21 In keeping with the City Council’s plan, on June 5, 2012, the City filed an action for
22 declaratory relief in this federal district court. (Hartinger Decl., ¶7.) On July 3, 2012, the City
23 filed its First Amended Complaint (“City’s Federal FAC”). The City’s Federal FAC seeks a
24 declaratory judgment as to the validity of Measure B. Specifically, it seeks a declaration that
25 Measure B does not violate: the contracts clauses of the federal or state constitution; the takings
26 clauses of the federal and state constitutions; federal or state constitutional due process rights; the
27 right to petition government as provided by federal and state constitutions; the separation of
28 powers doctrine set forth by the California Constitution; the Meyers-Milias-Brown Act; the

1 doctrine of promissory estoppel; or the California Pension Protection Act. (City's Federal FAC,
2 ¶31 & Prayer for Relief.)

3 The following five unions are parties: San Jose Police Officers' Association ("POA"); San
4 Jose Firefighters, I.A.F.F. Local 230 ("Firefighters' Local 230"); Municipal Employees'
5 Federation, AFSCME, Local No. 101 ("AFSCME"); City Association of Management Personnel,
6 IFPTE, Local 21 ("IFPTE Local 21"); and International Union of Operating Engineers, Local 3
7 ("Operating Engineers Local 3"). (City's Federal FAC, ¶¶13-17.) The unions represent an
8 appropriate cross-section of City employees who may be affected by Measure B.

9 **2. The Unions' Five State-Court Actions.**

10 On the morning of June 5, 2012, election day, the POA gave the City notice that it would
11 appear ex parte the next morning in state court to seek a temporary restraining order against
12 Measure B. (Hartinger Decl., ¶16, Ex. G.) On the morning of June 6, 2012, the day after the
13 election, the POA and other unions, City employees, and retirees began filing state-court actions
14 against the City in Santa Clara County Superior Court. (Hartinger Decl., ¶17.) As of today,
15 August 20, 2012, five state-court actions have been filed by unions or their privies against the
16 City. (Ibid.)

17 The City has filed a motion to consolidate and stay these actions – in favor of this federal
18 action – with the motion to be heard on August 23, 2012, by the Honorable Judge Patricia Lucas
19 of Santa Clara County Superior Court in San Jose. (Hartinger Decl., ¶30, Exs. M, N.)

20 **(a) The Police Officers' Association's Action ("POA Action").**

21 On June 6, 2012, the Police Officers' Association ("POA") filed the first state-court action
22 against the City for declaratory and injunctive relief. (*San Jose Police Officers' Association v.*
23 *City of San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV225926 ("POA
24 Action")). (Hartinger Decl., ¶¶29, 30.) On July 5, 2012, the POA filed a first amended complaint
25 ("FAC"). (Id. at ¶29.) The POA's FAC alleges that Measure B violates: the California
26 Constitution's contracts clause; the California Constitution's takings clause; the California
27 Constitution's due process guarantee; the California freedom-of-speech/right-to-petition
28 protection; the California Constitution's separation-of-powers doctrine; the Meyers-Milias-Brown

1 Act; and the California Pension Protection Act. (POA FAC, ¶¶73-96, 103-109.) The POA's FAC
 2 also alleges that Measure B constitutes a breach of contract of the POA's memorandum of
 3 understanding ("MOA") with the City. (POA FAC, ¶¶98-102.) Noticeably, the POA's FAC
 4 avoids stating any federal-law claim.

5 In the POA action, no discovery has been propounded, and the initial CMC is scheduled
 6 for October 16, 2012. (Hartinger Decl., ¶20.)

7 **(b) The *Sapien* Action (Firefighters' Local 230).**

8 Also on June 6, 2012, five active and retired San Jose firefighters filed a state-court action
 9 against the City for declaratory, injunctive, and mandamus relief entitled *Robert Sapien, et al. v.*
 10 *City of San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV225928 ("*Sapien*
 11 *Action*"). (Hartinger Decl., ¶21, Ex. I (*Sapien* Complaint, ¶¶3-7).) The *Sapien* plaintiffs are or
 12 were members of San Jose Firefighters, I.A.F.F. Local 230. (Hartinger Decl., Ex. D (Declaration
 13 of Christopher Platten in Support of Firefighters' Local 230's Motion to Dismiss the City's
 14 Federal Action ["Platten Decl.,"] ¶1).)

15 The *Sapien* Action alleges that Measure B violates the California Constitution's (1)
 16 contracts clause, (2) takings clause, and (3) due process guarantee. (*Sapien* Complaint, ¶¶20-23,
 17 28-29, 31-33, and 35-37.) Like the *POA* Action, the *Sapien* Action avoids stating any federal-law
 18 claims even though their counsel and their union have admitted that federal claims are at issue.
 19 (Hartinger Decl., ¶1, Ex. D; Answers to City's Federal FAC by Firefighters' Local 230, IFPTE
 20 Local 21, and Operating Engineers Local 3 [admitting to allegations in FAC ¶6].)

21 The *Sapien* plaintiffs have propounded a Request for Production of Documents (set one)
 22 and Special Interrogatories (sets one and two). (Hartinger Decl., ¶22.) The initial CMC is
 23 scheduled for October 16, 2012. (Ibid.)

24 **(c) The *Harris* Action (Operating Engineers Local 3).**

25 On June 15, 2012, four current or former City employees filed a state-court action against
 26 the City for declaratory, injunctive, and mandamus relief entitled *Teresa Harris, et al. v. City of*
 27 *San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV226570 ("*Harris* Action").
 28 (Hartinger Decl., ¶23.)

1 Counsel for the *Harris* plaintiffs, Wylie, McBride, Platten & Renner, are also counsel for
 2 the *Sapien* plaintiffs and three of the defendant unions in this federal action (Firefighters' Local
 3 230, IFPTE Local 21, and Operating Engineers Local 3). (Hartinger Decl., Ex. D.) The *Harris*
 4 plaintiffs are or were members of Operating Engineers, Local 3. (Hartinger Decl., Ex. D (Platten
 5 Decl., ¶3).) On July 3, 2012, the *Harris* plaintiffs filed a First Amended Complaint ("*Harris*
 6 FAC"), dropping Plaintiff Suzann Stauffer. (Hartinger Decl., ¶24, Ex. J (*Harris* FAC, ¶¶3-6).)

7 Like the *Sapien* Action, the *Harris* FAC alleges that Measure B violates the California
 8 Constitution's (1) contracts clause, (2) takings clause, and (3) due process guarantee. (Harris
 9 FAC, ¶10, 26-27, 30-31, and 34-35.) Like the *POA* and *Sapien* Actions, the *Harris* FAC avoids
 10 stating any federal-law claims.

11 Harris has served the City with a first set of Special Interrogatories. No other discovery
 12 has yet been propounded, and the initial CMC is scheduled for October 23, 2012. (Hartinger
 13 Decl., ¶25.)

14 (d) **The *Mukhar* Action (IFPTE Local 21).**

15 Also on June 15, 2012, five current or former City employees filed a state-court action
 16 against the City for declaratory, injunctive, and mandamus relief entitled *John Mukhar, et al. v.*
 17 *City of San Jose, et al.*; Santa Clara County Superior Court Case No. 112CV226574 ("*Mukhar*
 18 Action"). (Hartinger Decl., ¶26, Ex. K (*Mukhar* Complaint, ¶¶3-7).)

19 Counsel for the *Mukhar* plaintiffs is Wylie, McBride, Platten & Renner (counsel for the
 20 *Sapien* and *Harris* plaintiffs and for Firefighters Local 230, IFPTE Local 21, and Operating
 21 Engineers Local 3). (Hartinger Decl., Ex. D.) The *Mukhar* plaintiffs are or were members of City
 22 Association of Management Personnel, IFPTE Local 21. (Hartinger Decl., Ex. D (Platten Decl.,
 23 ¶2).)

24 The *Mukhar* Action is a mirror image of the *Harris* action, except that it names different
 25 plaintiffs. (*Mukhar* Complaint, ¶12, 28-29, 32-33, and 36-37.) Just like the *POA*, *Sapien*, and
 26 *Harris* Actions, the *Mukhar* Action avoids stating any federal-law claims.

27 No discovery has been propounded, and the initial CMC is scheduled for October 23,
 28 2012. (Hartinger Decl., ¶27.)

1 (e) **AFSCME Action.**

2 On July 5, 2012, AFSCME filed a state-court action against the City for declaratory,
 3 injunctive, and mandamus relief. (*American Federation of State, County, and Municipal*
 4 *Employees, Local 101 v. City of San Jose, et al.*; Santa Clara County Superior Court Case No.
 5 112CV227864 (“AFSCME Action”).) (Hartinger Decl., ¶28, Ex. L.) The AFSCME Action
 6 alleges that Measure B violates: the California Constitution’s contracts clause; the California
 7 Constitution’s takings clause; the California Constitution’s due process guarantee; the California
 8 Constitution’s right-to-petition protection; the doctrine of promissory and equitable estoppel; and
 9 the California Pension Protection Act. (AFSCME Complaint, ¶¶121, 139, 144, 146, 157, 165,
 10 176-181.) The AFSCME Action also alleges that Measure B constitutes an unconstitutional bill
 11 of attainder under the California Constitution, and an illegal ultra vires tax, fee, or assessment
 12 under the California Constitution. (AFSCME Complaint, ¶¶123, 129, 167-171.)

13 Like the other state-court actions, the AFSCME Action avoids stating federal-law claims.
 14 No discovery has yet been propounded, and the initial CMC is scheduled for November 13, 2012.
 15 (Hartinger Decl., ¶29.)

16 **III.**
 17 **ARGUMENT**

18 **A. THE CITY’S DECLARATORY JUDGMENT ACTION MEETINGS ALL OF**
 19 **JUSTICIABILITY.**

20 This case meets the standards for justiciability under the Declaratory Judgment Act. The
 21 suit raises federal issues and presents a bona-fide case or controversy ripe for adjudication. The
 22 fact that the unions have sued in state court over these same provisions of Measure B belies any
 23 arguments to the contrary.

24 **1. DECLARATORY JUDGMENT STANDARDS.**

25 An action for declaratory relief permits parties uncertain of their obligations to avoid
 26 incurring liability for damages by obtaining a declaratory judgment in advance of their
 27 performance. *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir.
 28 1981). Declaratory judgments also promote judicial efficiency by avoiding a multiplicity of
 actions between the parties. *Ibid.* A party seeking declaratory relief must show only: (1) an

1 actual controversy, (2) regarding a matter within federal court subject matter jurisdiction.
 2 *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998).

3 **(a) Federal Subject Matter Jurisdiction.**

4 In declaratory relief actions, whether the matter “arises under federal law” depends on
 5 whether the defendant could bring a federal law cause of action against the plaintiff seeking
 6 declaratory relief. “A person may seek declaratory relief in federal court if the one against whom
 7 he brings his action could have asserted his own rights there.” *Standard Insurance Company v.*
 8 *Saklad*, 127 F.3d 1179, 1181 (9th Cir. 1997). The Court explained, “in a sense we can reposition
 9 the parties in a declaratory relief action by asking whether we would have jurisdiction had the
 10 declaratory relief defendant been a plaintiff seeking a federal remedy.” *Id.* at 1181.

11 This case arises under federal law – the contracts clause, due process guarantee, and
 12 takings clause of the U.S. Constitution. Before bringing suit and in papers filed in this action
 13 (including the answers of Firefighters’ Local 230, IFTPE Local 21, and Operating Engineers Local
 14 3), defendants asserted that Measure B violates federal law. They could have chosen to pursue
 15 these federal claims, in addition to the state claims they filed in their numerous state court
 16 lawsuits, but purposefully did not. In fact, many plaintiffs who claim that public employers have
 17 violated their vested rights to retirement benefits bring their claims in federal court. (*See, supra*, at
 18 pp. 2:24-3:14.)

19 Unless the federal claim is settled or released, subject matter jurisdiction is not lost by the
 20 defendant later expressly disavowing its federal claim or choosing to assert only state law rights in
 21 a state court action. *Household Bank v. JFS Group*, 320 F.3d 1249, 1259-1260 (11th Cir. 2003).

22 **(b) Actual Controversy.**

23 In determining whether a declaratory judgment action presents an “actual controversy,”
 24 “[t]he question in each case is whether the facts alleged, under all the circumstances, show that
 25 there is a substantial controversy, between parties having adverse legal interests, of sufficient
 26 immediacy and reality to warrant the issuance of a declaratory judgment.” *MedImmune, Inc. v.*
 27 *Genentech, Inc.*, 549 U.S. 118, 127 (2007), quoting *Maryland Casualty Co. v. Pacific Coal & Oil*
 28 *Co.*, 312 U.S. 270, 273 (1941).

1 Here, there is no question of an actual controversy. The POA, other unions, City
 2 employees, and City retirees claimed, even before Measure B was enacted, that it violated their
 3 vested rights. As soon as the voters enacted Measure B, they sued in state court, raising the same
 4 issues concerning vested rights as raised in the City's declaratory judgment complaint. In fact, the
 5 motion to dismiss filed by AFSCME states: "MEF's members are directly affected by Measure B
 6 and its elimination of the vested right to receive the full measure of promised retirement and other
 7 post-employment benefits." (AFSCME Memo at p. 3.)

8 **2. THE CITY'S LAWSUIT SATISFIES CONSTITUTIONAL RIPENESS**
 9 **REQUIREMENTS.**

10 **(a) The Filing Date Does Not Deprive This Lawsuit of Ripeness.**

11 The POA contends that this action lacks ripeness because it was filed the day of the
 12 election, before the results were announced. The POA is wrong on the law, and none of the cases
 13 it cites support this hyper-technical proposition.

14 Even if there is a contingency, an "actual controversy" exists if the contingency is likely to
 15 occur. For example, declaratory relief is granted to insurers in coverage disputes with their
 16 insureds, even though the insurer's liability to indemnify the insured is contingent on its insured
 17 being held a liable third party. *Employers Ins. of Wausau v. Fox Entertainment Group, Inc.*, 522
 18 F.3d 271, 278 (2d Cir. 2008). The focus is on "the practical likelihood that the contingencies will
 19 occur." *Ibid.* As stated in *Wausau*:

20 We also reverse the district court's dismissal of Fox Entertainment and News
 21 Corp. based on lack of a justiciable case or controversy. "That the liability
 22 may be contingent does not necessarily defeat jurisdiction of a declaratory
 23 judgment action. Rather, courts should focus on the practical likelihood that
 24 the contingencies will occur[]." *E.R. Squibb & Sons, Inc. v. Lloyd's & Cos.*,
 241 F.3d 154, 177 (2d Cir. 2001), quoting *Associated Indent. Corp. v.*
Fairchild Indus., Inc., 961 F.2d 32, 35 (2d Cir.1992) (omission in original).

Id. at 278.

25 Here, on the morning of the election, as the voting took place, the POA gave the City
 26 written notice that it would appear in Superior Court the following morning to seek a TRO against
 27 the implementation of Measure B. (Hartinger Decl., Ex. G.) In doing so, the POA acknowledged
 28 that Measure B was likely to be enacted, and that an actual controversy existed. The POA cannot

1 now claim lack of ripeness.

2 None of the case law cited by the POA supports its interpretation of the “ripeness”
3 standard – that filing a declaratory relief action the day of the election requires dismissal of this
4 case.

5 First, there is no absolute rule that ripeness is measured at the filing of the complaint.
6 *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), cited by the POA, relied on *Newman-Green*,
7 *Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 830 (1989). But *Newman-Green* stated only that the
8 existence of federal jurisdiction “ordinarily” depends on the facts at the initiation of the lawsuit,
9 and “like most general principles, however, this one is susceptible to exceptions.” *Id.*

10 Second, the cases cited by the POA do not support its arguments. They involve standing or
11 mootness, and not ripeness.

12 In *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997), the plaintiff, a state
13 employee, had claimed that an amendment to the Arizona Constitution declaring English to be
14 Arizona’s “official language” adversely affected her employment which involved communicating
15 in both English and Spanish. *Id.* at 50. But the Supreme Court found her claim for prospective
16 relief to be moot because, during the litigation, plaintiff had left her state employment for a private
17 sector position. *Id.* at 48, 72-73. Here, no party claims that this action is moot.

18 *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) held that plaintiffs, Defenders of the
19 Wildlife and others, did not have a sufficiently concrete injury to challenge a Secretary of Interior
20 rule that limited the reach of the Endangered Species Act. Here, there is no question that City
21 employees allege concrete injury.

22 *Renne v. Geary*, 501 U.S. 312 (1991), involved a challenge to Article II, section 6(b) of the
23 California Constitution, which prohibited political parties from endorsing candidates for
24 nonpartisan offices. The Court held that the parties seeking relief, individual voters and local
25 political party committee members, lacked standing to assert the rights of political parties and
26 others, and in any event there was no record of “an actual or imminent application” of section
27 6(b). *Id.* at 319-323. As stated above, here, the voters have enacted Measure B and there is no
28 question that City employees allege concrete injury from its provisions.

1 In *Sierra Club v. Dombeck*, 161 F.Supp.2d 1052 (D. Ariz. 2001), the Forest Service
 2 contended that the case should be dismissed because the Forest Service had decided to conduct
 3 further environmental analysis of the water delivery system at issue in the litigation. *Id.* at 1061-
 4 62. The Court held that the case was not moot, based on the stringent standard that subsequent
 5 events must make “it absolutely clear that the allegedly wrongful behavior could not reasonably be
 6 expected to recur.” *Id.* at 1062 (quotation omitted). Here, there is no question of mootness; the
 7 City intends to implement Measure B as adopted by the voters.

8 Finally, not only is the POA’s argument legally unsupported, it makes no practical sense.
 9 Even if the POA were correct, the City could simply refile its lawsuit, as the election was held and the
 10 voters enacted Measure B.

11 **(b) This Is Not a Case Where Further Action Must Be Taken Before the**
 12 **Law May Be Implemented.**

13 The POA also argues that this case is not ripe because it requires implementing ordinances.
 14 Neither the facts nor the law support this argument. In fact, the POA and other defendants have
 15 placed Measure B, as it was enacted, at issue in the state cases they have filed.

16 First, the First Amended Complaint’s description of the provisions of Measure B at issue
 17 makes it clear that, with a few exceptions, they do not require further action. The provisions of
 18 Measure B at issue include provisions that:

- 19 • Require employees to pay higher retirement contribution rates, or to opt into a lower
- 20 cost plan (1506-A);
- 21 • In the absence of a new plan still require the payment of higher contribution rates
- 22 (1507-A);
- 23 • Change the definition of disability retirement (1509-A);
- 24 • Discontinue supplemental payments to retirees (1511-A); and
- 25 • Require employees to make greater contributions to retiree healthcare (1512-A).

26 (City’s Federal FAC, ¶29.)

27 “A claim is fit for decision if the issues raised are primarily legal, do not require further
 28 factual development, and the challenged action is final.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109,

1 1126 (9th Cir. 2009). In *Selecky*, the plaintiffs' employer had stated an intent to enforce new state
 2 rules requiring employees to fill prescriptions for the "morning after pill" in spite of religious
 3 objection. The Ninth Circuit found that the employees' declaratory relief action satisfied both
 4 Article III and prudential ripeness requirements. *Id.* at 1124-26. The Court explained:

5 We consider whether the administrative action is a definitive statement of an agency's
 6 position; whether the action has a direct and immediate effect on the complaining parties;
 7 whether the action has the status of law; and whether the action requires immediate
 compliance with its terms.

8 *Id.* at 1126 (quotations and citation omitted). These factors were satisfied in *Selecky* even though
 9 "the new rules may undergo some amendment or agency construction," because they currently had
 10 the force of law. *Ibid.*

11 Here, the *Selecky* factors are more than satisfied. The voters have spoken. Measure B is
 12 final, does not require further factual development and the issues raised are primarily legal. And
 13 Measure B will have a direct and immediate effect on the City's employees and retirees. The City
 14 has only agreed to delay implementation in order to give the parties an opportunity to litigate their
 15 legality.

16 There are two provisions of Measure B that the City has included in this lawsuit because
 17 the POA and others challenge them on their face, but which are not immediately operative.
 18 Section 1510-A authorizes the City Council to reduce retiree COLAs in the event of a "fiscal and
 19 service level emergency." Section 1514-A requires that, in the event a court determines that the
 20 City cannot impose higher contribution rates, the City must obtain equivalent savings through
 21 salary reductions. These provisions will become operative in the event of an emergency, or a
 22 court's ruling, respectively. But the POA and other defendants have challenged these provisions
 23 as illegal on their face in state court, and cannot have it both ways. Unless the POA and other
 24 defendants agree to refrain from challenging these provisions, they should remain in this lawsuit.¹

25
 26 ¹ The POA incorrectly contends that the City's Federal FAC "specifically pleads that Measure B
 27 requires implementing ordinances" and cites to paragraphs 9, 10, 29(G), 33 and 34. (POA Memo
 28 at 5.) That is simply not true. Paragraph 9 states only that the City delayed "implementation of
 (footnote continued)

1 Second, the case law cited by the POA is clearly distinguishable. In *Texas v. United*
 2 *States*, 523 U.S. 296, 300-301 (1998), the Supreme Court held that adjudication of the legality of
 3 Texas statutes under the Voting Rights Act was premature because implementation was contingent
 4 on events – appointment of a master or management team to oversee a school district governed by
 5 an elected board – that had not occurred. Here, as explained above, most of Measure B is
 6 effective without regard to other events.

7 The POA simply misquotes *Schreiber Distribution Co. v. Serv-Well Furniture Co.*, 806
 8 F.2d 1393, 1401 (9th Cir. 1986), which does not stand for the proposition that an amended
 9 complaint cannot cure a deficiency in the original complaint. *Schreiber* stated the opposite:
 10 “Because the district court did not determine, nor can we conclude, that the allegation of other
 11 facts could not possibly cure the deficiencies in Schreiber’s complaint, the district court *abused its*
 12 *discretion in dismissing* the RICO counts with prejudice.” *Ibid.* (emphasis added). Moreover, as
 13 explained in the prior section, *Lujan* and *Sierra Club*, cited again in this section by the POA, do
 14 not support the POA’s contention of lack of ripeness because they involve standing and mootness,
 15 not ripeness, and are factually distinguishable.

16 **(c) The City Does Not Seek an “Advisory Opinion.”**

17 The City does not seek an advisory opinion. As stated above, the Complaint specifically
 18 lists the provisions of Measure B that defendants claim are illegal. Measure B will have a concrete
 19 effect on City employees by impacting their compensation and changing eligibility criteria for
 20 certain retirement benefits. Having raised these same issues in state court actions, the POA and
 21 other defendants cannot claim here that the City seeks an advisory opinion.

22 _____
 23 increased pension contributions” until 2013, to permit adjudication of their legality. Paragraph 10
 24 states only that “to implement Measure B *in its entirety*” the City must develop administrative
 25 procedures and implementing ordinances. Paragraph 29(G) only describes the “actuarial
 26 soundness” requirement of Measure B. Paragraph 29(I) states only that Measure B supersedes
 27 inconsistent City laws to the contrary and accordingly calls “for ordinances to implement Measure
 28 B’s provisions.” Paragraph 33 states only that employees “*will begin* paying the increased
 contribution rate as of June 23, 2013.” Paragraph 34 asks only that the Court adjudicate the
 legality of Measure B.

1 Once again, the cases cited by the POA are clearly distinguishable, and in fact demonstrate
 2 that the City is not seeking an advisory opinion. In the cases cited by the POA, the courts refused
 3 to entertain lawsuits because their application was speculative. Here the issues are not
 4 “speculative.”

5 In *United Public Workers of America v. Mitchell*, 330 U.S. 75 (1947), the Court dismissed
 6 a challenge to the Hatch Act as seeking an advisory opinion because the Court refused to
 7 “speculate as to the kinds of political activity the appellants desire to engage in.” *Id.* at 90. Here,
 8 in contrast, there is no speculation as to the provisions of Measure B and how they will financially
 9 impact City employees. In *Hillblom v. U.S.* 896 F.2d 426 (9th Cir. 1990), the plaintiff did not
 10 identify any particular statute involved, but only “potential future acts” that might impact the
 11 plaintiff. *Id.* at 430. Here, again, there is a particular measure involved – Measure B – and it is
 12 clear how it impacts City employees. In *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227 (1937), the
 13 Court in fact found an actual controversy, stating that: “The dispute relates to legal rights and
 14 obligations arising from the contracts of insurance. The dispute is definite and concrete, not
 15 hypothetical or abstract.” *Id.* at 242. Similarly, here the dispute is “definite and concrete” – City
 16 employees will have their compensation and eligibility for certain benefits changed.

17 Other cases cited by the POA also do not aid its cause. In *Alabama State Federation of*
 18 *Labor v. McAdory*, 325 U.S. 450 (1945), the Court refused to pass on the validity of a state statute
 19 when it was unclear whether the statute would be applied to plaintiffs. *Id.* at 460. In *Alameda*
 20 *Conservation Assoc. v. California*, 437 F.2d 1087 (9th Cir. 1971), the court refused to rule on the
 21 legality of an anticipated quiet title action that had not yet materialized. *Id.* at 1093. *Dixie*
 22 *Electric Cooperative v. Citizens of Alabama*, 789 F.2d 852 (11th Cir. 1986), involved an attempt
 23 through a validation action to adjudicate issues that had not yet arisen. *Id.* at 858. In *Villas at*
 24 *Parkside Partners v. City of Farmers Branch*, 577 F.Supp. 2d 880 (N.D. Tex. 2008), the Court had
 25 already enjoined a City ordinance, and the City had made five different attempts to offer
 26 hypothetical alternatives for the Court’s approval. *Id.* at 885. Here, in contrast to the above cases,
 27 the voters have enacted Measure B, it has concrete effects on City employee compensation and
 28 benefits, and the POA and other defendants have asserted its illegality. There is nothing

1 hypothetical about this litigation.

2 Finally, in *Waiialua Agr. Co. v. Maneja*, 178 F.2d 603 (9th Cir. 1949), cited by the POA,
3 the Court rejected a lawsuit brought by agreement between the union and plantation owners over
4 employee overtime because no specific facts were alleged about individual employees. *Id.* at 613.
5 Here, there is no deal between the unions and the City to frame this lawsuit. And, as stated above,
6 the impacts of Measure B on City employees are obvious.

7 **(d) The POA's Argument On Standing Is Legally Incorrect; In A**
8 **Declaratory Relief Action, The Plaintiff Need Only Show An Actual**
9 **Case And Controversy.**

10 The POA misapprehends the law on standing. Under the Declaratory Judgment Act, the
11 City need demonstrate only the existence of an actual controversy between the parties. A case or
12 controversy exists here because Measure B would directly affect City employee compensation and
13 benefits.

14 In a declaratory relief action, the question is whether the defendant will be injured. As
15 explained by the Ninth Circuit in connection with federal jurisdiction: "A person may seek
16 declaratory relief in federal court if the one against whom he brings his action could have asserted
17 his own rights there." *Standard Insurance Company v. Saklad*, 127 F.3d 1179, 1181 (9th Cir.
18 1997). The court stated, "in a sense we can reposition the parties in a declaratory relief action by
19 asking whether we would have jurisdiction had the declaratory relief defendant been a plaintiff
20 seeking a federal remedy." *Id.* at 1181. Similarly, as explained by the United States Supreme
21 Court in describing a "case or controversy:" "It is immaterial that frequently, in the declaratory
22 judgment suit, the positions of the parties in the conventional suit are reversed; the inquiry is the
23 same in either case." *Maryland Casualty Co. v. Pacific Coal & Oil*, 312 U. S. 270, 273 (1941).
24 Applying those principles here, the issue is whether the City employees and retirees could be
25 plaintiffs seeking a federal remedy. The answer is clearly yes. They would have standing in
26 federal court because they can allege the requisite injury – Measure B would affect their
27 compensation and benefits.

28 Moreover, the POA's argument on standing ignores the very purpose of declaratory relief.
An action for declaratory relief permits parties uncertain of their obligations to avoid incurring

liability for damages by obtaining a declaratory judgment in advance of their performance. *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The City is entitled to bring a declaratory relief action in order to obtain a legal ruling in advance of any potential injury to its employees that would give rise to damages.

The question here is whether the defendants can allege injury, not the City. The defendants clearly can allege injury – under Measure B their compensation will be reduced and benefits affected. And defendants have asserted the illegality of Measure B. These factors create the required case or controversy for a declaratory relief action. Under the Declaratory Relief Act, the City is entitled to an adjudication in advance of committing any injury.

B. DEFENDANTS HAVE NOT DEMONSTRATED ANY BASIS FOR THIS COURT TO ABSTAIN FROM DECIDING THIS CASE.

The Court should reject defendants request that it abstain under *Younger*, *Pullman*, and *Brillhart*. First, this case does not satisfy the requirements of *Younger* and *Pullman*, and thus this court has no authority to abstain under those doctrines. Second, although the Court does have discretion to abstain under *Brillhart*, this case does not meet the criteria for abstention.

1. YOUNGER ABSTENTION DOES NOT APPLY BECAUSE THE CITY'S FEDERAL ACTION WILL NOT ENJOIN THE STATE-COURT ACTIONS OR HAVE THE EFFECT OF DOING SO.

Firefighters' Local 230 and the POA argue that the Court should dismiss or stay the City's Federal Action under the *Younger* abstention doctrine.² This argument must be rejected because this action does not satisfy the fourth *Younger* test: that the federal action will enjoin the state-court action or have the effect of doing so. *Shyh-Yih Hao v. Wu-Fu Chen*, 2011 U.S. Dist. LEXIS 33149, *39-40 (N.D. Cal. March 16, 2011). As a result, it would be error for the Court to abstain under *Younger*.

² AFSCME does not refer to *Younger* abstention in its memorandum.

(a) ***Younger* Abstention Does Not Apply Unless The Federal Action Will Enjoin The State-Court Action Or Have The Effect Of Doing So.**

Younger abstention is proper only when all four of its requirements are “strictly met.” *Shyh-Yih Hao v. Wu-Fu Chen, supra*, 2011 U.S. Dist. LEXIS 33149 at *37, citing *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1148 (9th Cir. 2007). The fourth *Younger* factor requires that:

[T]he federal court action [subject to the *Younger* motion] would “enjoin the [state-court] proceeding or have the practical effect of doing so, i.e., would interfere with the state proceeding in a way that *Younger* disapproves.”

Shyh-Yih Hao v. Wu-Fu Chen, supra, 2011 U.S. Dist. LEXIS 33149 at *37, quoting *San Jose Silicon Valley Chamber of Commerce Political Action Committee v. City of San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008). If this one factor is not met, the Court need not even consider the other factors. This Court has stated:

The Ninth Circuit has emphasized that “abstention is only appropriate in the narrow category of circumstances in which the federal court action would actually ‘enjoin the [ongoing state] proceeding, or have the practical effect of doing so.’” *AmerisourceBergen*, 495 F.3d at 1151. This occurs, for instance, when a federal court’s finding that a state statute or regulatory scheme is unconstitutional would effectively enjoin enforcement of that statute in ongoing state court proceedings. *See Gilbertson v. Albright*, 381 F.3d 965, 982 (9th Cir. 2004). In contrast, “the Supreme Court has rejected the notion that federal courts should abstain whenever a suit involves claims or issues simultaneously being litigated in state court merely because whichever court rules first will, via the doctrines of res judicata and collateral estoppel, preclude the other from deciding that claim or issue.” *AmerisourceBergen*, 495 F.3d at 1151.

Shyh-Yih Hao v. Wu-Fu Chen, supra, 2011 U.S. Dist. LEXIS 33149 at *39-40.

In its motion, the POA refers only to *Younger*’s “three tests” (POA Memo at p. 17:12). *See AmerisourceBergen, supra*, 495 F.3d at 1149 (holding that it is “incorrect” to evaluate only the three threshold *Younger* factors without reaching the “vital and indispensable fourth element”). Similarly, Firefighters’ Local 230 does not address this fourth *Younger* factor – rather, it cites *Gilbertson, supra*, generally for the notion that *Younger* applies so long as the federal action has a “preclusive” effect. (Firefighters’ Memo at p. 7:23-24.) It is not surprising why the unions avoid this fourth factor: it is fatal to their argument.

(b) **The City's Federal Action Will Not Enjoin the State-Court Actions or Have the Effect of Doing So.**

Here, the City's Federal Action will not enjoin the state-court actions or have the effect of doing so. First, the City's action will not enjoin the state-court actions; the City is seeking only declaratory – not injunctive – relief.

Second, the City's declaratory relief action will not have the effect of enjoining the state-court actions. "This occurs, for instance, when a federal court's finding that a state statute or regulatory scheme is unconstitutional would effectively enjoin enforcement of that statute in ongoing state court proceedings." *Shyh-Yih Hao v. Wu-Fu Chen*, supra, 2011 U.S. Dist. LEXIS 33149 at *37, citing *Gilbertson v. Albright*, supra, 381 F.3d at 982. That is not this case.

Here, any ruling by this Court on the legality of Measure B would not have the effect of enjoining the state court actions that address Measure B. Both the federal and state court actions seek a declaration regarding the validity of Measure B. Unless the state court choses to impose a stay, the state-court action would be free to proceed. As explained by this Court:

[T]he state court will be "free to continue simultaneously with the federal suit," *AmerisourceBergen*, 495 F.3d] at 1152, and if federal court resolves [plaintiff's] claims first, the state court will simply apply principles to issue preclusion to determine the effect, if any, of that ruling on the relevant issues in the dissolution proceeding. *See id.* (finding that potential application of collateral estoppel arising from concurrent state and federal proceedings does not justify abstention under *Younger*). Under such circumstances, concurrent jurisdiction over potentially related issues is entirely proper, and it would be error for this Court to abstain pursuant to *Younger*.

Shyh-Yih Hao v. Wu-Fu Chen, supra, 2011 U.S. Dist. LEXIS 33149 at *37, citing *Gilbertson v. Albright*, supra, 381 F.3d at 982.

The Ninth Circuit discussed this fourth factor of the *Younger* test in *Potrero Hills Landfill, Inc v. County of Solano*, 657 F.3d 876 (9th Cir. 2011), in which the Court of Appeals stated that *Younger* abstention applies only when the federal plaintiffs bring "challenges to the very processes" by which states render and compel compliance with their judgments. *Id.* at 886-87. In *Potrero Hill*, there was a parallel writ proceeding in state court, but the Court found no basis for *Younger* abstention because the federal plaintiffs did not challenge "the authority of state courts to

1 issue such writs nor processes for their enforcement once issued” *Id.* at 887.

2 In this case, the City is not challenging the process by which the state courts are
3 adjudicating Measure B, or seeking any relief that would effectively enjoin the state-court
4 proceedings. The pendency of a related action in state court is insufficient for *Younger* abstention.
5 As explained in *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 491 U.S.
6 350 (1989): “It is true, of course, that the federal court’s disposition of such a case may well
7 affect, or for practical purposes preempt, a future – or as in the present circumstances, even a
8 pending – state-court action. But there is no doctrine that the availability or even the pendency of
9 state judicial proceedings excludes the federal courts.” *Id.* at 373.

10 In conclusion, the Court cannot dismiss or stay the City’s federal action under *Younger*.
11 The fourth factor is not met, and *Younger* abstention is unavailable. *AmerisourceBergen, supra*,
12 495 F.3d at 1148 (“balancing the *Younger* elements, rather than determining whether each
13 element, on its own, is satisfied, conflicts with the requirement that federal courts abstain only in
14 those cases falling within the ‘carefully defined’ boundaries of federal abstention doctrines”
15 [citation omitted]).

16 **2. PULLMAN ABSTENTION DOES NOT APPLY TO THIS CASE, AND –**
17 **EVEN IF IT DID – CERTIFICATION OF STATE-LAW QUESTIONS IS**
FAVORED OVER ABSTENTION.

18 In its motion to dismiss, the POA argues that the Court should stay this case under *Pullman*
19 because “no California state court has yet decided the legality of Measure B.” (POA Memo at p.
20 19:17-19.) AFSCME reiterates this point and adopts the POA’s arguments. (AFSCME Memo at
21 p. 10:10-11:2 & n.3.) The Firefighters do not even try to argue for *Pullman* abstention.

22 As discussed below, the Court should not – indeed cannot – abstain under *Pullman*. First,
23 the doctrine does not apply because there is no question that two of its three mandatory factors are
24 not present: (1) a ruling on the state-law issues will not obviate the need for federal adjudication;
25 and (2) to the extent state-law issues must be resolved, the governing state precedents are clear and
26 well established.

27 Second, even if *Pullman* did apply, the Supreme Court and the Ninth Circuit favor
28 certification of state-law questions to the California Supreme Court over *Pullman* abstention.

1 Therefore, the Court should reject the unions' request for *Pullman* abstention.

2 (a) ***Pullman* Abstention Does Not Apply.**

3 (i) **Summary of *Pullman* Abstention.**

4 *Pullman* abstention is "an extraordinary and narrow exception to the duty of a District
5 Court to adjudicate a controversy that is properly before it." *Porter v. Jones*, 319 F.3d 483, 492
6 (9th Cir. 2003) (reversing a stay under *Pullman* of a federal First Amendment action) (internal
7 quotation and citation omitted).

8 In order to "give due respect to a suitor's choice of a federal forum for the hearing and
9 decision of his federal constitutional claims," *Pullman* abstention should rarely be applied.
10 *Porter, supra*, 319 F.3d at 492, quoting *Zwickler v. Koota*, 389 U.S. 241, 248 (1967).

11 Three criteria that must be present before *Pullman* abstention is permissible:

- 12 1. The complaint must involve a sensitive area of social policy that is best
13 left to the state to address.
- 14 2. A definitive ruling on the state issues by a state court could obviate the
15 need for [federal] constitutional adjudication by the federal court; and
- 16 3. The proper resolution of the potentially determinative state law issues is
uncertain.

17 *Fireman's Fund Ins. Co. v. City of Lodi*, 2002 U.S. App. LEXIS 20999, *18 (9th Cir., Aug. 6,
18 2002) (holding, in part, that district court erred in abstaining under *Pullman* from deciding
19 whether municipal ordinance was preempted by state law when state-law preemption analysis
20 resembled the federal-law preemption analysis), cert. denied by *City of Lodi v. Fireman's Fund*
21 *Ins. Co.*, 2003 U.S. LEXIS 2743 (U.S. 2003). "[T]he absence of any one of these three factors is
22 sufficient to prevent the application of *Pullman* abstention." *Porter v. Jones, supra*, 319 F.3d at
23 492. In fact, "[a]bstaining under *Pullman* constitutes an abuse of discretion when the requirements
24 for *Pullman* abstention are not met." *Id.* at 491.

25 Finally, dismissal is never appropriate under *Pullman* abstention; the Court must retain
26 jurisdiction to later adjudicate a plaintiff's federal claims. *Columbia Basin Apartment Ass'n v.*
27 *City of Pasco*, 268 F.3d 791, 802 (9th Cir. 2001).

1 As discussed below, at the very least, two of the three *Pullman* factors are not present in
 2 this case. As a result, the Court has no discretion to consider *Pullman* abstention, and the unions'
 3 request for a *Pullman* stay must be denied.

4 (ii) **The Case Does Not Satisfy the Second *Pullman* Factor: A**
 5 **Definitive Ruling by a California Court Would Not Obviate the**
 6 **Need for Federal Constitutional Adjudication by This Court.**

7 The second *Pullman* factor is not present, and thus the Court cannot stay this case based on
 8 *Pullman*. *Porter v. Jones, supra*, 319 F.3d at 492. This factor requires that a definitive ruling on
 9 the state issues by a state court obviate the need for federal constitutional adjudication by the
 10 federal court. *Fireman's Fund Ins. Co. v. City of Lodi, supra*, 2002 U.S. App. LEXIS 20999 at
 11 *18.

12 In their motions, defendants argue that a ruling in state court that Measure B violates the
 13 California Constitution will obviate the need for this Court to adjudicate Measure B's validity
 14 under the U.S. Constitution. (POA Memo at p. 20:12-17, citing *Smelt v. County of Orange*, 447
 15 F.3d 673, 681 (9th Cir. 2006).) This reasoning has been rejected by the United States Supreme
 16 Court when the state-court actions involve claims based on state constitutional provisions that are
 17 parallel to their federal counterparts.

18 In *Hawaii Housing Authority v. Midkiff*, the Court held that *Pullman* abstention is not
 19 required when state constitutional provisions at issue mirror the federal constitution. *HAA v.*
 20 *Midkiff*, 467 U.S. 229, 237 n.4 (1984) ("[*Pullman*] abstention is not required for interpretation of
 21 parallel state constitutional provisions"); compare *Columbia Basin Apartment Ass'n v. City of*
 22 *Pasco*, 268 F.3d 791, 806 (9th Cir. 2001) (holding that *Pullman* abstention was appropriate
 23 because Washington State Constitutional prohibition of unreasonable searches "significantly
 24 differs" from the U.S. Constitution's Fourth Amendment).

25 The reason behind this mirror-image rule is clear:

26 Since most states have both some form of due process clause..., abstention would
 27 be necessary, or at least within the power of the district judge, in nearly every
 28 civil rights action. Consequently, litigants' access to a federal forum would be
 significantly delayed. That could endanger the very effectiveness of the civil
 rights jurisdiction.

1 *Stephens v. Tielsh*, 502 F.2d 1360, 1362 (9th Cir. 1974); *Pue v. Sillas*, 632 F.2d 74, 80 (9th Cir.
 2 1980) (holding that *Pullman* abstention was an abuse of discretion when federal plaintiff raised
 3 due process challenge under both California and U.S. due process protections).

4 Here, the City has raised claims based on the U.S. Constitution's (1) Contracts Clause, (2)
 5 Takings Clause of the Fifth Amendment, and (3) due process protections in the Fifth and
 6 Fourteenth Amendments. (City's Federal FAC, ¶31.) In state court, the unions have raised
 7 challenges to Measure B based on the California Constitutional equivalents. Critically, these state
 8 and federal provisions mirror each other. *Retired Emps. Ass'n of Orange County v. County of*
 9 *Orange*, 610 F.3d 1099, 1102 (9th Cir. 2010) ("Courts apply the same analysis to claims brought
 10 under the Contracts Clause of the United States Constitution and the California Constitution.");
 11 *Pue v. Sillas*, *supra*, 632 F.2d at 81 (holding that due process protections of California
 12 Constitution mirror those of the U.S. Constitution); *Plumleigh v. City of Santa Ana*, 2010 U.S.
 13 Dist. LEXIS 131343, *8-9 (C.D. Cal., Dec. 8, 2010) ("California courts generally construe takings
 14 under the California Constitution congruently to takings under the Fifth Amendment"), citing *San*
 15 *Remo Hotel L.P. v. City and County of San Francisco*, 27 Cal. 4th 643, 664 (2002).

16 Thus, because the California and U.S. Constitutional provisions at issue in the Measure B
 17 litigation are parallel, *Pullman* abstention is not appropriate. *HAA v. Midkiff*, *supra*, 467 U.S. at
 18 237 n.4; *Pue v. Sillas*, *supra*, 632 F.2d at 81 ("the existence of a mirror-image state constitutional
 19 issue does not implicate the policies which justify abstention").

20 Finally, should unions might argue that, even if the constitutional provisions are parallel
 21 provisions, the federal court must still analyze state law to adjudicate the federal claims, they
 22 would be mistaken. Such an argument would overstates the role of state law. Federal courts apply
 23 *federal law* in deciding whether the federal contracts clause has been violated, and are not bound
 24 by the decisions of state courts on this federal issue.

25 In *Appleby v. City of New York*, 271 U.S. 364 (1926), the United States Supreme Court
 26 explained, in reversing New York's highest court based on the federal contracts clause:
 27 "Ordinarily this Court must receive from the court of last resort of a State its statement of state law
 28 as final and conclusive, but the rule is different in a case like this." *Id.* at p. 380. This principle

1 has been followed without exception in federal contracts clause cases.

2 “When this Court is asked to invalidate a state statute upon the ground that it
3 impairs the obligation of a contract, the existence of the contract and the
4 nature and extent of its obligation become federal questions for the purposes
5 of determining whether they are within the scope and meaning of the Federal
6 Constitution, and for such purposes finality cannot be accorded to the views of
7 a state court.” *Irving Trust v. Day*, 314 U.S. 556, 561 (1942).

8 “The question whether a contract was made is a federal question for purposes of Contract
9 Clause analysis (citation omitted) and “whether it turns on issues of general or purely local law,
10 we cannot surrender the duty to exercise our own judgment.” *General Motors v. Romein*, 503 U.S.
11 181, 187 (1992).

12 “Although federal courts look to state law to determine the existence of a contract, federal
13 rather than state law controls as to whether state or local statutes or ordinances create contractual
14 rights protected by the Contracts Clause.” *San Diego Police v. San Diego Retirement System*, 568
15 F.3d 725, 737 (9th Cir. 2009).

16 As a result, litigation of state claims in state court will not obviate the federal questions,
17 and the second *Pullman* factor is not satisfied.

18 **(iii) This Case Fails to Satisfy the Third *Pullman* Factor: State Law
19 Is Not “Uncertain” or “Novel” for *Pullman* Purposes.**

20 To satisfy the third factor, the Court must find that “the proper resolution of the potentially
21 determinative state law issue is uncertain.” *Fireman’s Fund Ins. Co. v. City of Lodi*, supra, 2002
22 U.S. App. LEXIS 20999, *18. Here, however, the Court is not faced with a law that is
23 “uncertain” for purposes of analysis under *Pullman*.

24 Critically, “[t]he fact that a state court has not ruled on the precise issue at stake in this
25 case does not mean that the proper resolution of the state law issue is “uncertain.” *Fireman’s*
26 *Fund Ins. Co. v. City of Lodi*, supra, 2002 U.S. App. LEXIS 20999 at *18, citing *Wis. v.*
27 *Constantineau*, 400 U.S. 433, 439 (1971). In contending that Measure B presents novel issues of
28 state law, AFSCME ignores this point and fails to identify any necessary construction or
interpretation of Measure B.

1 This is not a case, like those cited by AFSCME, where the state statute is claimed to be
 2 unduly vague, meaning a state court interpretation may resolve the vagueness issue, and eliminate
 3 the need to litigate the federal question. *See Albertson v. Millard*, 345 U.S. 242 (1953) (AFSCME
 4 Memo at p. 6). Nor is it a case like *Quong Ham Wah Co. v. Industrial Acc. Commission of*
 5 *California*, 255 U.S. 445, 448 (1921), where the state statute was claimed to be discriminatory,
 6 and the California Supreme Court's interpretation eliminated the discriminatory feature.
 7 (AFSCME Memo at p. 7.)

8 If the state statute in question, although never interpreted by a state tribunal, is not fairly
 9 subject to an interpretation which will render unnecessary or substantially modify the federal
 10 constitutional question, it is the duty of the federal court to exercise its properly invoked
 11 jurisdiction. *Harman v. Forssensuis*, 380 U.S. 528 (1964); *see also Babbit v. United Farm*
 12 *Workers Nat. Union* 442 U.S. 51 (1979).

13 Second, this is a case that will be decided by the application of well-developed law on
 14 vested rights, that is similar under both the state and federal contracts clauses. The law in this area
 15 is very fact specific, must be applied on a case by case basis, with the results turning on the
 16 legislative intent in granting a particular retirement benefit.

17 As recently confirmed by the California Supreme Court, "we conclude generally that
 18 legislation in California may be said to create contractual rights when the statutory language or
 19 circumstances accompanying its passage 'clearly . . . evince a legislative intent to create private
 20 rights of a contractual nature enforceable against the [government body]." *REAOC v. County of*
 21 *Orange*, 52 Cal.4th 1171, 1187 (2011), quoting *Valdez v. Cory*, 139 Cal.App.3d 773, 786 (1983),
 22 quoting *United States Trust v. New Jersey*, 431 U.S. 1, 17, fn. 14. (1977). Federal law similarly
 23 requires "clear and unmistakable" evidence that a governmental entity "intends to bind itself
 24 contractually." *San Diego POA v. San Diego City Employees Retirement System*, 568 F.3d 725,
 25 737 (9th Cir. 2009).

26 Third, contrary to AFSCME's assertions, this is not the only case pending in California
 27 concerning the issue of public employees vested rights to post-retirement benefits. Many cases are
 28 pending in both state *and federal* courts. Many plaintiffs – unions and retirees – have chosen to

1 sue in federal court. In fact, as discussed in the Introduction, a recent case was brought in federal
 2 court, on behalf of a union, by a law firm that represents a plaintiff in this case. See *Hanford*
 3 *Executive Management Employee Association, supra*, 2012 U.S. Dist. LEXIS 23161 (E.D. Cal.
 4 Feb. 23, 2012).

5 **(b) Even If *Pullman* Applies, Certification To The California Supreme**
 6 **Court Is Favored Over *Pullman* Abstention.**

7 Even if *Pullman* abstention applies, this Court should retain jurisdiction because the U.S.
 8 Supreme Court disfavors abstention where states such as California permit certification of state-
 9 law questions to the state supreme court. *Arizonans for Official English v. Arizona*, 520 U.S. 43,
 10 75-77 (1997) (“[c]ertification today covers territory once dominated by a deferral device called
 11 “*Pullman* abstention”...).

12 In *Arizonans*, the Supreme Court criticized the lower courts for refusing the Arizona
 13 Attorney General’s repeated requests for certification of state-law questions to the Arizona
 14 Supreme Court. *Arizonans, supra*, 520 U.S. at 76-77 (issue concerned Arizona constitutional
 15 provision requiring that the state act only in the English language). In so doing, the Court held
 16 that certification was a more efficient method of addressing novel state-law questions than
 17 *Pullman* abstention. *Ibid*.

18 Certification procedure, in contrast [to *Pullman* abstention], allows a federal court faced
 19 with a novel state-law question to put the question directly to the State’s highest court, reducing
 20 the delay, cutting the cost, and increasing the assurance of gaining an authoritative response.
 21 *Arizonans, supra*, 520 U.S. at 76 (citations omitted).

22 California law permits certification to the California Supreme Court by the Ninth Circuit.
 23 Cal. Rules of Court, rule 8.548. In *Los Angeles Alliance for Survival*, the California Supreme
 24 Court held that “[m]any commentators have noted the benefits of certification.” *Los Angeles*
 25 *Alliance for Survival v. City of Los Angeles*, 22 Cal. 4th 352, 360 (2000) (first instance of
 26 California Supreme Court accepting certified question from the Ninth Circuit).

27 In its motion to dismiss, AFSCME seeks to cast certification as an improper, disfavored
 28 process. (AFSCME Memo at p. 2:6-7, referring to certification as adding “inefficiency”). This

1 view of certification has been rejected by both the U.S. Supreme Court and the Ninth Circuit.
 2 *Arizonans, supra*, 520 U.S. at 76. In fact, the litigation associated with *Retired Employees Ass'n*
 3 *of Orange County Inc. v. County of Orange*, 610 F.3d 1099 (9th Cir. 2010), is an example of the
 4 certification process working as it should.

5 The certification process *exists* to address AFSCME's concern that, "[b]ecause, as
 6 contended by the City, the issues raised by the parties are novel and/or raise question undecided by
 7 state law, any decision rendered by this court of the Ninth Circuit Court of Appeals will have no
 8 precedential value with respect to such issues of state law." (AFSCME Memo at p. 1:14-17).

9 In conclusion, *Pullman* abstention is inapplicable because the three mandatory *Pullman*
 10 factors cannot be satisfied. The Court is not presented with a novel application of state law whose
 11 resolution is uncertain for *Pullman* purposes. Moreover, if the Court were to conclude otherwise,
 12 the Court should pursue the certification process instead of abstention. In light of *Arizonans* and
 13 its progeny, certification is favored over abstention.

14 **3. THE COURT SHOULD RETAIN JURISDICTION OF THIS CASE**
 15 **BECAUSE THE *BRILLHART* PRINCIPLES WOULD BE FURTHERED BY**
FEDERAL ADJUDICATION.

16 The unions argue that the Court should dismiss or stay the City's action under *Brillhart v.*
 17 *Excess Ins. Co. of America*, 316 U.S. 491 (1942) and its progeny. (POA at pp. 14:20-17:9;
 18 Firefighters at pp. 6:9-8:4; AFSCME at p. 10:2-9.) In so arguing, the unions discuss *Brillhart*
 19 abstention generally, without acknowledging that the City's federal action bears no factual
 20 resemblance to the typical *Brillhart* abstention case.

21 The vast majority of *Brillhart* cases involve an insurance company that has filed a
 22 declaratory action in federal court raising only state-law claims and predicated on diversity
 23 jurisdiction. That scenario has no application to the City's federal action.

24 Here, the City raises federal claims – claims that the unions have refused to raise in state
 25 court even while admitting that such claims must be adjudicated. As such, it is the unions who
 26 engage in forum shopping by filing multiple, uncoordinated actions in state court that omit critical
 27 claims. Thus, to further the principles articulated in *Brillhart*, this Court should exercise – not
 28 decline – jurisdiction.

(a) Summary of *Brillhart* Abstention.

Under the Declaratory Judgment Act, the Court's jurisdiction is permissive. 28 U.S.C. § 2201. In determining whether to retain jurisdiction, district courts consider three factors identified in *Brillhart*. *Brillhart, supra*, 316 U.S. at 494-96; *Government Employees Ins. Co. ("GEICO") v. Dizol*, 113 F.3d 1220, 1225 (9th Cir. 1998). Specifically, district courts consider whether abstention will:

1. Avoid needless determination of state law issues;
2. Discourage litigants from filing declaratory actions as a means of forum shopping;
3. Avoid duplicative litigation.

Dizol, supra, 113 F.3d at 1225.

The Ninth Circuit has identified several additional factors that should be considered by courts conducting a *Brillhart* analysis including: whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue; whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage; and whether the use of a declaratory action will result in entanglement between the federal and state court systems. *Dizol*, 113 F.3d 1220, 1225 n.5, citing *Kearns*, 15 F.3d at 145 (J. Garth, concurring).

(b) The *Brillhart* Factors Weigh in Favor of this Court Retaining Jurisdiction.

(i) Federal-Law Claims Are At Issue in the City's Action.

The Court should retain jurisdiction over this case because the City raises *federal claims*, a fact that is not present in the vast majority of *Brillhart* abstention cases.

In *Wilton v. Seven Falls Co.* where the Supreme Court applied *Brillhart* to declaratory relief actions, the plaintiff had not raised federal claims and had instead based its case on diversity jurisdiction. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 219 (1995). The Court specifically noted that: "We do not attempt at this time to delineate the outer boundaries of that discretion in other cases, for example, *cases raising issues of federal law* or cases in which there are no federal

1 parallel state proceedings.” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 290 (1995) (emphasis
 2 added).³ Courts have since indicated that the presence of federal claims must always be a major
 3 consideration weighing against surrender of federal jurisdiction. *Verizon v. Inverizon*, 295 F.3d
 4 870, 873 (8th Cir. 2002), citing *Moses H. Cone Mem’l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1,
 5 26 (1983).

6 Here, the City seeks declaratory relief on several federal constitutional claims.
 7 Specifically, the City seeks a declaration that Measure B does not violate the U.S. Constitution’s
 8 Contracts Clause, Fifth Amendment, and Fourteenth Amendments. Unions previously informed
 9 the City that Measure B would violate federal law, and several union defendants have admitted in
 10 this action that such federal claims should be adjudicated. As a result, the case is immediately
 11 distinguishable from the state-law insurance actions for which *Brillhart* abstention was designed.

12 The facts here are similar to those in *Verizon v. Inverizon*, 295 F.3d 870 (8th Cir. 2002).
 13 There, the Eighth Circuit reversed a stay under *Brillhart*, holding that the district court did not
 14 give proper weight to the presence of federal-law issues. *Id.* at 873. In *Verizon*, a company
 15 (Inverizon) that provided agriculture and business consulting services sent a cease and desist letter
 16 to the communications company Verizon. *Verizon, supra*, 295 F.3d at 871. Inverizon alleged that
 17 that the “Verizon” mark was likely to cause confusion with Inverizon’s mark and therefore
 18 violated the federal Lanham Act. *Ibid.*

19 When Inverizon did not respond to Verizon’s request for further information, Verizon filed
 20 a federal declaratory relief act in the U.S. District Court of Missouri seeking a declaration of rights
 21 under the federal Lanham Act and various state statutes. *Id.* at 872. Six weeks later, Inverizon
 22 filed a Missouri state court action “expressly denying that it was seeking any relief under federal
 23

24 ³ *Brillhart* also concerned a case based on diversity jurisdiction. *Brillhart, supra*, 316
 U.S. at 493.

25 Ordinarily it would be uneconomical as well as vexatious for a federal court to
 26 proceed in a declaratory judgment suit where another suit is pending in a state court
 presenting the same issues, *not governed by federal law*, between the parties.

27 *Brillhart, supra*, 316 U.S. at 495 (emphasis added).
 28

1 law.” *Ibid.* Inverizon then filed in federal court a motion to stay the federal action, and the district
 2 court granted a stay. *Ibid.*

3 On appeal, the Eighth Circuit held that the stay was an abuse of discretion. *Id.* at 871. The
 4 Court’s holding rested predominantly on the district court’s failure to acknowledge the presence of
 5 federal claims in Verizon’s federal declaratory action:

6 However, the district court failed to mention one very significant factor present in
 7 this case that simply was not at issue in either *Brillhart* or *Wilton*—that is, the
 8 presence of a federal question that is not present in the state court action.” Cf.
 9 *Moses H. Cone Mem’l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 26 (indicating
 that “the presence of federal-law issues must always be a major consideration
 weighing against surrender” of federal jurisdiction).

10 *Verizon, supra*, 295 F.3d at 873.

11 The court noted that, “[c]ontrary to the district court’s finding, the record reveals that the
 12 two actions do not involve the same issues because the state court action specifically states that it
 13 ‘pleads no federal cause of action.’” *Id.* at 873. Inverizon, however, had earlier raised federal
 14 claims in its cease and desist letter to *Verizon*. *Id.* at 874. The same could be said about this case.
 15 The unions here reiterate throughout their briefs that they do not raise federal claims in their state
 16 law actions.

17 In reversing the stay in *Verizon*, the Eighth Circuit held that, “Inverizon can hardly
 18 complain that it was deprived of its choice of forum when it explicitly chose not to raise a federal
 19 Lanham Act claim in its state petition. *Id.* at 875. Again, the same could be said about this case.

20 This case – unlike the traditional *Brillhart* case – involves federal questions, questions that
 21 the unions admit need adjudication but which they refused to plead in their state-court actions. As
 22 a result, the presence of these federal claims is a major consideration weighing against a stay.

23 **(ii) The Unions Are the Forum Shoppers Here – Not the City.**

24 The Court should retain jurisdiction here because abstention will have the opposite effect
 25 intended by a *Brillhart* stay – it will encourage forum shopping.

26 The unions’ accusations of “forum shopping” – and their objections to the federal forum –
 27 are unsupported and ironic. Union counsel in this case has previously brought vested rights claims
 28 in federal court, and there are numerous examples of similar vested rights litigation in federal

1 court.⁴ And it is the unions who threatened federal claims with respect to Measure B, but who
 2 then artfully pleaded their cases to avoid mentioning federal law. If anyone is forum shopping in
 3 this case, it is the unions.

4 Firefighters' Local 230 initially asserted in its motion to dismiss that it was had raised
 5 federal claims, but then filed "errata" pleadings to remove any reference to federal law, obviously
 6 in an effort to control the forum and avoid removal. (See Docket No. 9 (Memo of Points and
 7 Authorities in Support of Motion to Dismiss) and No. 25 (Errata to Memorandum).) And
 8 Firefighters' Counsel Christopher Platten of Wylie, McBride, Platten & Renner (and counsel for
 9 IFPTE Local 21 and Operating Engineers Local 3 in this action, and for plaintiffs in the *Sapien*,
 10 *Harris*, and *Mukhar* state-court actions), stated in a declaration filed in support this motion to
 11 dismiss: "Prior to the date the City Council voted to place Measure B on the ballot for the June
 12 election in the course of negotiations on behalf of Local 230 and Local 21 with representatives of
 13 the City, I repeatedly advised these representatives that provisions of the proposed ballot measure
 14 were fatally unconstitutional under both state and *federal* constitutions." (Hartinger Decl., ¶13,
 15 D.) Similarly, AFSCME Local 101 President Yolanda Cruz argued, prior to Measure B's
 16 enactment, that the City's proposed Charter amendments violate the United States Constitution.
 17 (Hartinger Decl., ¶14, Ex. E.)

18 Additionally – and perhaps most importantly – in their answers to the City's Federal FAC,
 19 three unions (Firefighters' Local 230, IFPTE Local 21, and Operating Engineers Local 3) *admitted*
 20 to the allegations in paragraph six. Paragraph six of the City's Federal FAC states (underlining
 21 added):

22 ¶6. ...A declaratory judgment is necessary to confirm that Measure B does not
 23 impair any vested rights, does not violate the contracts clauses of the
 24 federal and state constitutions, and does not violate federal or state due
process guarantees, or any of the other legal rights claimed by defendants.

25 ⁴ See *Hanford Executive Management Employee Association v. City of Hanford*, 2012 U.S. Dist.
 26 LEXIS 23161 (E.D. Cal. Feb. 23, 2012), *supra*, in which a union – represented by the law firm of
 27 Carroll Burdick & McDonough, which represents the POA in this case – filed a lawsuit in federal
 28 court on behalf of its members claiming violation of vested rights.

This judgment is necessary because the defendants contend, on behalf of the their members, that Measure B contains provisions that violate employee vested rights to certain retirement contributions and benefits and is (all or in part) a violation of the contracts clauses, federal and state due process guarantees, and other laws.

The unions have intentionally failed to plead the very federal claims they admit must be decided. By rewarding them with abstention, the Court will encourage the very gamesmanship that *Brillhart* stands against.

Ultimately, the City's choice to proceed in federal court was a proper decision to proceed with all claims in federal court. Under *Brillhart*'s second factor, discouraging forum shopping, the court should retain jurisdiction:

"The second aspect of the inquiry is fairness. The circuits' varying formulations all distinguish between legitimate and improper reasons for forum selection. Although many federal courts use terms such as "forum selection" and "anticipatory filing" to describe reasons for dismissing a federal declaratory judgment action in favor of related state court litigation, these terms are shorthand for more complex inquiries. The filing of every lawsuit requires forum selection. Federal declaratory judgment suits are routinely filed in anticipation of other litigation. The courts use pejorative terms such as "forum shopping" or "procedural fencing" to identify a narrower category of federal declaratory judgment lawsuits filed for reasons found improper and abusive, other than selecting a forum or anticipating related litigation. Merely filing a declaratory judgment action in a federal court with jurisdiction to hear it, in anticipation of state court litigation, is not in itself improper anticipatory litigation or otherwise abusive "forum shopping."

Sherwin-Williams Co. v. Holmes, 343 F.3d 383, 391 (5th Cir. 2003). Here, the City filed a comprehensive action in federal court so that the validity of Measure B under both federal and state law could be resolved in one forum through one action. That goal is "entirely consistent with the purposes of the Declaratory Judgment Act." *Sherwin Williams, supra*, at 398-99, quoting *Travelers Ins. Co. v. Louisiana Farm Bureau Fed'n*, 996 F.2d 774, 777 (5th Cir. 1993) (emphasis in original).

(iii) A Stay under *Brillhart* Will Encourage Duplicative State-Court Litigation.

Staying this case under *Brillhart* will encourage duplicative litigation, not control it. Tellingly, neither the POA, AFSCME, nor the *Sapien* plaintiffs have offered to waive their federal claims or have stated that federal claims need not be adjudicated because Measure B is lawful

1 under the U.S. Constitution. Apparently, they seek to preserve the option for a second round of
2 federal litigation if their state-court actions are unsuccessful.

3 Here, the interest of efficiency will be best served by the Court's adjudicating the City's
4 federal action. The City's Federal FAC is the most comprehensive of all six pending actions. At
5 present, the City's Federal Action encompasses all legal issues in the state-court actions except
6 two: AFSCME's bill-of-attainder and ultra-vires-tax claims. The only reason the City's Federal
7 FAC does not address these claims is because AFSCME filed its complaint after the City filed its
8 FAC. The City intends to amend its complaint to add these two issues.⁵

9 In contrast, the unions are attempting to prosecute five separate actions in state court,
10 rather than a single efficient proceeding. In considering abstention under *Brillhart*, district courts
11 also take into account the "general policy of avoiding piecemeal litigation" when determining
12 whether to retain jurisdiction. *Continental Casualty Co. v. Robsac Industries*, 947 F.2d 1367,
13 1371-73 (9th Cir. 1991), overruled on other grounds in *Dizol*, 133 F.3d at 1227.

14 Furthermore, the City's Federal Action is the only action that includes all parties and their
15 privies. In fact, the City amended its original federal complaint to ensure that all stake holders
16 were united in a single action. This is not the case with any of the state-court actions. Rather than
17 abstaining in favor of the state-court actions, the Court should retain jurisdiction here.

18 Finally, the unions have argued that the City's Federal FAC is inadequate because it does
19 not include individual employees as defendants. (POA Opp to State-Court Motion to Stay at p.
20 3:22-25; AFSCME Opp. at p. 9:6-8; *Sapien* Opp. at p. 3:21-22.) The City does not believe it is
21 necessary, or appropriate, to bring individuals into this Measure B litigation. But the FAC
22 includes DOE defendants, under which individuals could be named. Moreover, the City is willing
23 to name individuals through stipulation and order, if the unions and the Court insist.

24
25 ⁵ Firefighters' Local 230 argues that the state-court actions "are more far reaching" than the City's
26 Federal claim. (Firefighters' Memo at p. 7:7-8.) That claim was premised on the absence of
27 Operating Engineers Local 3 from the federal action and on the lack of individual plaintiffs. (Id.
28 at p. 7:8-15.) Operating Engineers Local 3 is now a defendant in this action, and as discussed
herein, the City will name individuals if this Court concludes it is necessary.

1 The City has crafted its Federal FAC to allow all parties to adjudicate all issues in a single
 2 action, whereas the unions attempt to prosecute piecemeal litigation.⁶ The Court should prevent
 3 this attempt and stay the state-court actions.

4 (iv) **The Ninth Circuit's Additional *Brillhart* Factors Militate in**
 5 **Favor of Retaining Jurisdiction.**

6 Finally, the Ninth Circuit's additional factors counsel in favor of retaining jurisdiction.
 7 First, an adjudication of validity of Measure B will certainly "clarify the legal relations at issue."
 8 *Dizol*, 113 F.3d 1220, 1225 n.5. Additionally, the City's action is not filed sought for purposes of
 9 procedural fencing; rather, it the *unions* who are forum shopping. *Sherwin-Williams Co. v.*
 10 *Holmes County*, 343 F.3d 383, 390 n. 2 (5th Cir. 2003) (noting that "procedural fencing" means
 11 that the action is merely the product of forum shopping). Finally, the declaratory action should
 12 not result in entanglement between the federal and state court systems. The City has filed a
 13 motion to stay the state-court actions which will be heard on August 23, 2012.

14 **IV.**
 15 **CONCLUSION**

16 As is often quoted in the *Brillhart* line of cases: "Essentially, the district court 'must
 17 balance concerns of judicial administration, comity, and fairness to the litigants.'" *Principal Life*
 18 *Ins. Co. v. Robinson*, 394 F.3d 665, (9th Cir. 2005) (citations omitted). The City has always
 19 sought a fair, efficient and comprehensive resolution of all claims related to Measure B. The
 20 City's federal lawsuit unquestionably will accomplish this purpose.

21 This case was pledged to the voters and publicly announced prior to its filing. It was
 22 intentionally comprehensive to ensure that both federal and state law claims can be resolved fairly
 23 and efficiently. Furthermore, it is currently pending in a federal court, which is an appropriate
 24 forum for this matter. The Court should exercise its discretion to retain jurisdiction of the action,

25 ⁶ AFSCME argues that a federal court decision in this action "would lack precedential value" and,
 26 as such, weights in favor of abstention. (AFSCME Opp at. p. 10:5-7.) AFSCME neglects to
 27 explain that similarly a state-court decision on the City's federal claims would likely not create
 28 precedent binding on federal courts in a future action by a current non-party.

1 and permit the City to proceed with its plan to efficiently resolve questions regarding the validity
2 of Measure B.

3
4 DATED: August 20, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

5
6 By: /s/ Arthur A. Hartinger

7 Arthur A. Hartinger
8 Attorneys for Plaintiff
9 City of San Jose
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Alameda, State of California. My business address is 555 12th Street,
Suite 1500, Oakland, CA 94607.

5 On August 22, 2012, I served true copies of the following document described as
6 **SUPPLEMENTAL DECLARATION OF ARTHUR A. HARTINGER IN SUPPORT OF**
7 **DEFENDANT CITY OF SAN JOSE'S MOTION TO CONSOLIDATE AND STAY** on the
interested parties in this action as follows:

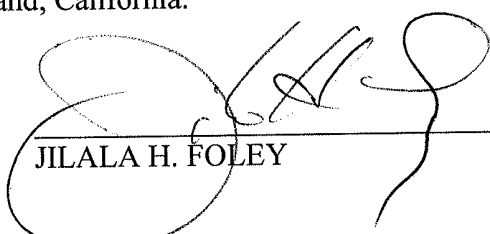
8 **SEE ATTACHED SERVICE LIST**

9 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
10 persons at the addresses listed in the Service List and placed the envelope for collection and
11 mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave,
12 Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On
the same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

13 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
14 document(s) to be sent from e-mail address jfoley@meyersnave.com to the persons at the e-mail
addresses listed in the Service List. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on August 22, 2012, at Oakland, California.

18 
19 JILALA H. FOLEY
20
21
22
23
24
25
26
27
28

SERVICE LIST

John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & RENNER 2125 Canoas Garden Avenue, Suite 120 San Jose, CA 95125 EMAIL: jmcbride@wmprlaw.com cplatten@wmprlaw.com mrenner@wmprlaw.com	<i>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</i> <i>AND</i> <i>Defendant, SAN JOSE FIREFIGHTERS, I.A.F.F. LOCAL 230 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i> <i>AND</i> <i>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</i> <i>AND</i> <i>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</i> <i>AND</i> <i>Defendant, CITY ASSOC. OF MANAGEMENT. PERSONNEL, IFPTE, LOCAL 21 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i> <i>AND</i> <i>Defendant, THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i>
Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton CARROLL, BURDICK & MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104 EMAIL: gadam@cbmlaw.com jyank@cbmlaw.com gmartinez@cbmlaw.com jstoughton@cbmlaw.com	<i>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</i> <i>AND</i> <i>Defendant, SAN JOSE POLICE OFFICERS' ASSOC. (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i>

<p>Teague P. Paterson Vishtap M. Soroushian BEESON, TAYER & BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4051</p> <p>EMAIL: tpaterson@beesontayer.com vsoroushian@beesontayer.com</p>	<p>Attorneys for Defendant, AFSCME LOCAL 101 MUNICIPAL EMPLOYEES FEDERAL AFSCME, LOCAL 101(U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p> <p>AND</p> <p>Plaintiff, AFSCME LOCAL 101 (Santa Clara County Superior Court Case No. 112CV227864)</p>
<p>Harvey L. Leiderman REED SMITH, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105</p> <p>EMAIL: hleiderman@reedsmith.com</p>	<p>Attorneys for Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV226574)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)</p>

1956275.1